United States Court of Appeals

for the Second Circuit

APPENDIX

76-1267

B
Pgs

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

WILLIAM RODMAN and WILLIAM ROSENBERG,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

(Volume I—Pages 1 to 438)

MORTON BERGER
Attorney for Appellants
13 Eastbourne Drive
Spring Valley, N. Y. 10977
(914) 425-6484

ROBERT B. FISKE, JR.
United States Attorney for the Southern District of New York
United States Court House
Foley Square
New York, N. Y. 10007
(212) 791-0108

UNITED STATES COURT OF APPEALS
FILED
JUL 30 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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Arthur Fine	220	221		
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Rosemary Rodman	553			

Minor Offense ☐ Other Dismissed ☐ | 0208 District | 1 Office | Disposition | 1a defendant | No. of 02 Defdts

CHARGES

U S CODE SECTION	OFFENSES	COUNTS
18:371	Consp. to viol. Fed. securities laws.	1

HIGH CASE NO.

BAIL
☐ Denied
AMT
Set ($)

ATTORNEYS

U.S. Attorney or Asst.
John A. Love
212 791-1987

Defense ☐ CJA ☐ Ret'd ☐ Waived ☐ Self ☐ None ☐ Other ☐ PD ☐ CD
Roger H. Rosenberg for Louis R. Aidala, 1250 Bway, N.Y.C. 10001
Tele: (212) 736-8088

INTERVALS DATES

ARREST	☐ High Risk D. F. & Date Designd	INDICTMENT or INFORMATION	ARRAIGNMENT	TRIAL	Disposition
12-8-75 or U.S. Custody ☐ Fugitive ☐ For Above Charges		Determined 1-15-76	1-26-76	Trial Set For	Voir Dire ☐
		Waived ☐	1st Plea 1-26-76	☐ Not Guilty ☐ Nolo ☐ Guilty	Trial Begun 3-22-76
		Superseding ☐ Indictment/Info ☐	First Plea	☐ Not Guilty ☐ Nolo ☐ Guilty	Trial Ended 3-22-76

☐ Prosecution Deferred

MAGISTRATE

		DATE	INITIAL/No.
Search Warrant	Issued		
	Return		
Summons	Issued		
	Served		
Fugitive Warrant			
COMMITMENT			
OFFENSE (In Comp. Mat.)			

	INITIAL/No.
INITIAL APPEARANCE	
PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Scheduled / Date Held	
☐ Waived ☐ Not Waived	☐ Intervening Indictment
Tape No.	INITIAL/No.

OUTCOME
☐ Dismissed
☐ Held for District CT
BOND
☐ Held to Answer to U. S. D.
AT:
Magistrate's Initials

Show last names and suffix numbers of other defendants on same indictment/information
Radman-1.

DATE	PROCEEDINGS
1-15-76	Filed indictment.
1-26-76	Deft.(atty. present) Pleads not guilty. Mot. ret. in 10 dys Deft. to surrender passport. Ordered photographed and finger printed. Deft. R.O.R. Case assigned to Judge Cagliardi for all purposes. Ward,J.
[illegible]-76	Filed notice of appearance of atty. Roger H. Rosenberg for Louis R. Aidala.
3-04-76	Filed Govt's proposed examination of prospective jurors. Filed one envelope ordered sealed and impounded and placed in vault in room 66C. Cagliardi,J.
[illegible]	Trial cont'd. Judge Cagliardi-jury trial begun.
[illegible]	Trial cont'd.
[illegible]	Trial cont'd.
3-19-76	Trial cont'd. and concluded. Jury can notagree nn a verdict Both deft.'s motion for a mistrial is grated. Court discharges jury. j Cagliardi,J.
03-19-76	Filed Govt.'s request to charge.
[illegible]	Filed one envelope ordered sealed and impounded and placed in vault in room 66C. Judge Cagliardi,

OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PURSUANT TO 18 USC §3161(h) – "SPEEDY TRIAL ACT"

Felony ☒ JUDGE/MAGISTRATE 0854 Assigned Trial Disp./Sentence 0208 1 District Office

U.S. vs. RODMAN, WILLIAM defendant

2a

Day 15 Mo. 01 Yr. 76 Docket No. 0043

No. of Defdnts 02

NAMES

U.S. CODE Section 18:371 OFFENSES Conp. to viol. Fed. securities laws. COUNTS 1

MAGR. CASE NO.

BAIL & RELEASE: Personal Rec. / Unsecured B. / Conditional Rel. / Denied / AMT $ (000) / Set / date / Bail Not Made / Bail Status Changed (See Docket) / 10% D. / Surety / Collate / 3rd Par. Custod. / PSA

U.S. Attorney's Atty. John S. Lo... (212) 791-1987

Defense Counsel (Add'l Names on Separate Sheet) / Retd / Waiver / CJA / Pub. Def. / Legal Aid / Self / Morton Berger 54 L... White Plains, N.Y. 10607 (...8-5508)

JUN 21 1976

ARREST: Date Arrested / Writ Issued / Date Detained / Fugitive / Prosecution Deferred

INDICTMENT: Information 1-15-76 / Waived / Superseding Indict/Info

ARRAIGNMENT: 1-26-76 / 1st Plea 1-26-76 / Final Plea

Trial Set For / Not Guilty / Nolo / Guilty / Not Guilty / Nolo / Guilty

TRIAL: Voir Dire / Trial Began / Trial Ended

Disposition: Convicted / Acquitted / Dismissed / Nolled/Discontinued

SENTENCE

	Issued	DATE	INITIAL/No.
Search Warrant	Return		
Summons	Issued		
	Served		
Arrest Warrant			
COMPLAINT			
OFFENSE (Rule 20, etc.)			

INITIAL APPEARANCE — INITIAL/No.

PRELIMINARY EXAMINATION OR REMOVAL HEARING — Date Scheduled / Date Held / Waived / Not Waived / Intervening Indictment

Tape No. — INITIAL/No.

OUTCOME: Dismissed / Held for District CJ / BOND: Exonerated / To Transfer District / Held to Answer to U. S. District Court

AT:

Magistrate's Initials

List first names and docket numbers of other defendants on same indictment/information

Sentence-2.

DATE	PROCEEDINGS	V. Excludable Delay (a)	(b)	(c)
1-15-76	Filed indictment.			
1-26-76	Def'...(atty. present) Pleads not guilty. Mot. ret. in 10 dys. Deft. ordered photographed and fingerprinted. R.O.R. Case assigned to Judge Cagliardi for all purposes. Ward,J.			
2-6-76	Filed notice of appearance of atty. Morton Berger,Esq.			
2-17-76	Filed Govt.'s proposed examination of prospective jurors.			
3-16-76	Filed one envelope ordered sealed and impounded and placed in vault in room 66C. Cagliardi,J.			
3-16-76	Before Judge Cagliardi Jury trial begun.			
3-16-76	Trial cont'd.			
3-17-76	Trial cont'd.			
3-18-76	Trial cont'd.			
3-19-76	Trial cont'd. andconcluded. Jury can not agree on a verdict. Both deft.'s motion for a mistrial is granted. Court discharges jury. Cagliardi,J.			
3-29-76	Filed Govt.'s request to charge.			
3-26-76	Filed one envelope ordered sealed and impounded and placed in vault. Cagliardi,J.			

-over-

OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE

DATE	IV. PROCEEDINGS (continued) 3a	V. EXCLUDABLE DELA (a)	(b)	(c)
03-24-76	Before Judge C liardi 2nd Jury trial beg .			
03-25-76	Trial cont'd.			
03-26-76	" "			
03-29-76	" "			
03-30-76	Trial cont'd. and concluded. Jury returns with a verdict of guilty as to both defts. P.S.I. ordered. For sentence 5-19-76 at (9:30) . Deft. cont'd. R.O.R. until dated of sentence. Cagliardi,J.			
04-30-76	Filed deft.'s memo. of law in support of defts.' motion for a directed verdict of acquittal.			
5-5-76	Filed transcript of record of proceedings, dated Dec. 16-17, 1975			
5-5-76	Filed transcript of record of proceedings, dated Mar 24-26, 29 1976.			
05-19-76	Filed deft's memo. of law in support of their motion for acquittal.			
05-24-76	Filed Govt's sentencing memorandum.			
05-28-76	Filed Judgment (atty. Morton Berger) Fifteen (15) Months Impr. serve 4 mons. remainder of sent. E.S.S. 3 yrs. 11 mons. prob. w/super. Deft. cont'd. R.O.R. pending appeal. Cagliardi,J. issued all copies			
06-02-76	Filed notice of appeal from judgment of 5-28-76. mailed copies.			
-21-76	Seal [illegible] memo in opposition to motion for [illegible] Acquittal			
6-21-76	Seal memo of Govt of M Berger			
6-21-76	Seal dept [illegible] memo of Govt.			
6-21-76	Seal dept [illegible] motion to re-open			
6-21-76	Seal dept [illegible] request to charge.			
6-21-76	Seal dept [illegible] supplemental memorandum of govt.			
6-21-76	Seal dept memo of Govt.			

BEST COPY AVAILABLE

OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC §3161(h) – "SPEEDY TRIAL ACT".

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
03-24-76	Before Judge Cagliardi 2nd jury trial begun.				
03-25-76	Trial cont'd.				
03-26-76	" "				
03-29-76	" "				
03-30-76	trial cont'd and concluddd. Jury returns with a verdict of guilty as to both defts. P.S.I. ordered. For sentence 5-19-76 at 9:30. Deft. cont'd. R.O.R. until dateof sehecne. Cagliardi,J.				
5-5-76	Filed transcript of record of proceedings, dated Mar 15 19, 1976.				
5-5-76	Filed transcript of record of proceedings, dated Mar 24-26,29, 1976.				
05-24-76	Filed Govt.'s sentencing memorandum.				
05-28-76	Filed Judgment (atty. [illegible]) 15 mons. impr. serve 4 mons. remainder of sent. S.S.S. 3 yrs. 11 mons. prob. w/supvn. Deft. cont'd. R.O.R. pending appeal. Cagliardi,J. issued all copies.				
05-28-76	Filed notice of appeal from judgment of 5-28-76. Mailed copies.				

[illegible]
RAYMOND F. BURGHARDT, Clerk
By [illegible], Deputy Clerk

Interval (per Section II) | Start Date / End Date

3a -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S.A.

vs

Adams

CASE NO. M 2-45

JUDGE [illegible]

CLERK'S CERTIFICATE.

I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A-D, and the original filed papers numbered 1 thru 21, and exhibits none, inclusive, constitute the record on appeal in the above entitled proceeding; except for the following missing documents:

DATE FILED	PROCEEDINGS
none	

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 21 day of June, in the year of our Lord, One thousand nine hundred and seventy 1971, and of the Independence of the United States the 195th year.

JUN 21 1971

Raymond F. Burghardt.
Clerk of the Court

JAL:ds
76-0042
n-1375

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

- v - : INDICTMENT

WILLIAM RODMAN and
WILLIAM ROSENBERG, : 76 Cr.

Defendants. :

COUNT ONE

The Grand Jury charges:

f. INTRODUCTION

1. At all times material to this Indictment, WILLIAM ROSENBERG, the defendant, was a trader engaged in buying and selling securities at John R. Maher Associates, Inc., a brcker-dealer registered with the United States Securities and Exchange Commission with offices at 101 Park Avenue, New York, New York. John R. Maher Associates, Inc. was owned by the defendant ROSENBERG's wife.

2. At all times material to this Indictment, WILLIAM RODMAN, the defendant, was a self-employed securities dealer residing at 1 Fawnhill Drive, Monsey, New York.

3. At all times material to this Indictment, Franklin Properties, Inc. was a Nevada land development corporation with principal executive offices located in Denver, Colorado. The common stock of Franklin Properties was publicly traded on the over-the-counter market.

4. At all times material to this Indictment, J. Kenneth Noonan was a registered representative engaged in selling securites to the public at Leyner, Dreskin & Co., a broker-dealer registered with the United States Securities and Exchange Commission with offices at 50 Broadway, New York, New York.

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n-1375

II. THE CONSPIRACY

5. From on or about November 1, 1975 up to and including December 8, 1975, in the Southern District of New York and elsewhere, WILLIAM RODMAN and WILLIAM ROSENBERG, the defendants, and others to the Grand Jury unknown, unlawfully, wilfully and knowingly, did combine, conspire, confederate and agree together and with each other to commit violations of the laws of the United States, to wit, violations of Title 15, United States Code, Sections 77q, 77x, 78j(b) and 78ff, and Title 18, United States Code, Section 1341.

III. THE OBJECT OF THE CONSPIRACY

6. The object of the conspiracy was (a) to gain control of the market of Franklin Properties common stock, (b) fraudulently to inflate the market price of Franklin Properties common stock through rigged trading, secret kickbacks and bribes to brokers and registered representatives and by other means, and (c) fraudulently to unload approximately 150,000 shares of Franklin Properties stock on the unsuspecting public.

IV. THE MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

7. Among the means by which the defendants and their co-conspirators would and did carry out the said conspiracy were the following:

(a) As of December 3, 1975, WILLIAM ROSENBERG, the defendant, acting through John R. Maher Associates, Inc., had accumulated approximately 150,000 shares of Franklin Properties common stock.

(b) On or about December 3 and 4, 1975, WILLIAM RODMAN, the defendant, offered J. Kenneth Noonan a bribe in order to induce Noonan to sell Franklin Properties common stock to his customers, while fraudulently failing to disclose to his customers that Noonan would receive the bribe from the defendants in addition to the ordinary broker's commission on the sale. The bribe was to be fifty cents per share for every share Noonan sold to his customers. RODMAN referred Noonan to WILLIAM ROSENBERG, the defendant, to make arrangements for selling the stock and collecting the bribe.

(c) On or about December 5, 1975, WILLIAM ROSENBERG, the defendant, outlined the deal to Noonan, instructed Noonan that all sales were to be directed to John R. Maher Associates, Inc. and assured Noonan that the bribe offered by the defendant RODMAN would be paid and that said bribe would not be disclosed.

V. OVERT ACTS

8. In furtherance of said conspiracy and to effect the objects thereof, the defendants committed the following overt acts in the Southern District of New York:

1. On or about December 4, 1975 the defendant, WILLIAM RODMAN, had a telephone conversation with J. Kenneth Noonan during which RODMAN assured Noonan that the bribe would be paid by the defendant, WILLIAM ROSENBERG.

2. On or about December 5, 1975, the defendant, WILLIAM ROSENBERG, had a telephone conversation with J. Kenneth Noonan during which ROSENBERG outlined the terms of the deal to Noonan and assured Noonan that the bribe would be paid.

VI. STATUTORY ALLEGATIONS

11. It was part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly, in the offer and sale of securities of Franklin Properties, Inc. by the use of means and instruments of transportation and communication in interstate and foreign

commerce and by use of the mails would, directly and indirectly, (a) employ devices, schemes and artifices to defraud, (b) obtain money and property by means of untrue statements of material facts and omissions to state facts necessary to be stated in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engage in transactions, practices and courses of business which would and did operate as a fraud and deceit upon purchasers of the securities of Franklin Properties, Inc. in violation of Title 15, United States Code, Sections 77q and 77x.

12. It was further a part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly would devise a scheme and artifice to defraud and for obtaining money or property by means of false and fraudulent pretenses, representations and promises and for the purpose of executing such scheme and artifice and attempting to do so would knowingly cause mail matter to be delivered according to the direction thereon in violation of Title 18, United States Code, Section 1341.

13. It was further a part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce and of the mails, would use and employ a manipulative and deceptive device and contrivance in contravention of Rule

JAL:mr
76-0042
n-1375

10(b)5 (17 C.F.R. 240.10b-5), a rule prescribed by the Securities and Exchange Commission as necessary for the protection of investors.

(Title 18, United States Code, Section 371)

FOREMAN

THOMAS J. CAHILL
United States Attorney

United States of America vs. **11a** **United State_ District Court**

DEFENDANT WILLIAM BODMAN — THE SOUTHERN DISTRICT OF NEW YORK

DOCKET NO. 76 Cr. 43

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH: MAY DAY: 28, YEAR: 1976

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Morton Berger (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly, did combine, conspire, confederate and agree together and with each other to commit violations of the laws of the United States. (Title 18, United States Code, Section 371)

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) MONTHS execution of all but FOUR (4) MONTHS is suspended. Defendant is placed on probation for a period of THREE (3) YEARS plus ELEVEN (11) MONTHS. (Total probation for 47 months), to follow service of sentence, subject to the standing probation order of this court.

Defendant is continued R.O.R. pending appeal.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

FILED MAY 28 1976 S.D. OF N.Y.

SIGNED BY

[X] U.S. District Judge

[ ] U.S. Magistrate

LEE P. GAGLIARDI Date 6/1/76

Clerk's

United States District Court for

United States of America vs. 17a

DEFENDANT WILLIAM ROSENBERG

THE SOUTHERN DISTRICT OF NEW YORK

DOCKET NO. 76 Cr. 43

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH DAY YEAR: MAY 28, 1976

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL LOUIS AIDALA
(Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of { [ ] NOT GUILTY. Defendant is discharged; [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly, did combine, conspire, confederate and agree together and with each other to commit violations of the laws of the United States. (Title 18. United States Code. Section 371)

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) MONTHS, execution of all but FOUR (4) MONTHS is suspended. Defendant is placed on probation for a period of THREE (3) YEARS plus ELEVEN (11) MONTHS. (Total probation for 47 months), to follow service of sentence, subject to the standing probation order of this court.

Defendant is continued R.O.R. pending appeal.

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ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

(10)

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

U.S. DISTRICT COURT FILED MAY 28 1976 S.D. OF N.Y.

SIGNED BY

[X] U.S. District Judge

[ ] U.S. Magistrate

LEE P. GAGLIARDI

Date 6/1/76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	Before: HON. LEE P. GAGLIARDI, D.J., and a Jury
vs.	
WILLIAM RODMAN WILLIAM ROSENBERG,	76 CRIM. 43
Defendants.	

New York, March 24,25,26,29, 1976

STENOGRAPHER'S MINUTES

CLERK'S COPY
RETURN TO COURT REPORTERS ROOM 803 FOR FILING

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs. 76 Cr. 43

WILLIAM RODMAN,
WILLIAM ROSENBERG,

Defendants.

Before:

HON. LEE P. GAGLIARDI, D.J.,

and a jury.

New York, March 24, 1976,
2:00 p.m.

APPEARANCES:

ROBERT B. FISKE, JR., ESQ., United States Atttorney,
for the government;
John A. Lowe, Esq., Assistant United States
Attorney

MORTON BERGER, ESQ.,
Attorney for defendant Rodman

LOUIS AIDALA, ESQ.,
Attorney for defendant Rosenberg

- -

(A jury and two alternates were duly impaneled and sworn.)

THE COURT: All right, before we proceed here I would like to give you a few instructions and outline to you what procedure we are going to follow and what our typical day will be, the length of it. The case will go itself in the following manner:

The government will give an openin statement and in an opening statement it's expected that the government will outline to you the factual proof that it expects to present in connection with this case. The defendants may or may not open. In a criminal case there is no obligation upon the defendant to present any evidence in any way or to make any statements or do anything at all in a criminal case. There is no obligation upon them, no obligation upon the defendant to take stand. The defendant has the right to rely upon the presumption of innocence and the fact that the government has the burden of proving beyond a reasonable doubt the guilt of the defendants. So as I say, the defendants may or may not make an opening statement. If they do, again, it will be to outline to you what they expect to prove factually.

After the opening statements are concluded the government will present evidence through witnesses who will be put on the stand. He will be examined by counsel who put him on, cross examined by other counsel, and then maybe redirect by the government attorneys. After the government has completed its case, again the defendants may or may not put in any evidence. If they do, they will put a witness on the stand, he will be examined by that attorney and then cross examined by the government attorney, redirect and there may be some rebuttal evidence.

After all of the evidence is completed counsel will sum up to you. The government will sum up first, to be followed by summations of the defendants, and then a short rebuttal by the government. Again, in summation it is expected that the attorneys will review with you the facts that they believe have been established here and what reasonable inferences they think are warranted to be drawn by you on the basis of the facts that they believe have been proved here.

After that I will instruct you as to the law. Until we reach that point you are not to discuss the case at all among yourselves or with any-

body else. Don't let anybody else discuss it with you because until you have heard all of the evidence and until you have heard my instructions of law at the conclusion of the case, you will not be in a position to know what results you are going to arrive at here. It is most essential that you not discuss this case with anyone else or let anyone else discuss it with you.

Now, nothing that counsel say or anything that the court may say in connection with the facts in this case is to be taken in substitution of the tstimony of the witnesses. At all times it is your recollection of what the evidence is that controls. Perhaps your most important function during the course of the trial will be to determine the credibility of the witnesses. There is no magic formula about that other than if there is a magic formula of common sense. You know your business, in your social pursuits every day you meet people and you size them up. You don't do much different than that with a witness because he is in a courtroom. You observe his demeanor on the stand, how he appears to you, how he answers questions, whether his testimony is either supported or contradicted by other evidence in the case.

The credibility of a witness is solely a jury's function.

During the course of the trial there will be objections made to questions asked and I will have to rule on those objections. In raising objections counsel are raising questions of law and not questions of fact. We shouldn't pay any particular attention to how ma-y times I rule in favor of one side or the other. I am merely passing upon a question of law. If I sustain an objection to a question you are not to infer anything whatsoever from the reason that the question was asked or speculate as to what the answer might have been if the witness had been permitted to answer. A question has a meaning only by reason of an answer given to it and if there is an objection sustained to it, as I say, you are not to pay any attention to the fact that the question was asked or speculate as to what the answer may have been.

Also, before an objection may be made a witness may state something,or in response to a question that he is permitted to answer a witness may say more than the question calls for and motions may be made to strike the testimony. If I grant those motions

and strike testimony, it is as though you never heard it. It is hard to do, but you will have to ignore what was said and get it out of your mind.

Now, in every way I will attempt to conceal from you any opinion that I may have as to how you should decide this case. The guilt or innocence of these defendants is solely the province of the jury based upon the testimony adduced here and the law as I hcarge it to you.

I have no opinion as to the guilt or the innocence of the defendants, so don't think that by an expression or tone of my voice or anything that I say or do in here that you should be governed by that in how you are going to arrive at the guilt or innocence of these defendants.

Now, I usually start court at 9:30 in the morning. I usually have a midmorning recess, have a luncheon recess around a quarter of 1, about an hour and 10 minutes for lunch or so -- it's hard to get you all lunch and get back here in an hour so we give you an extra 10 or 15 minutes, have a mid-afternoon recess, and then we go to 4:30, 4:45 in the afternoon.

This is expected to be a short trial, three

or four days at the most. I insist on promptness. I expect you to be here at 9:30 promptly to begin the court day. I demand that the attorneys be present here no matter what their circumstances.

Now, I am a commuter myself and I know some of you people are. Sometimes I get tied up in traffic, but I usually leave my house in plenty of time to get here if I know I have to be here at a certain time. Now, if you have left your house in sufficient time to get you here with a little to spare so you are not just here at 9:30, you may be here a little ahead of time. If you have done that, that's all I have asked of you. If you get tied up in a traffic jam or the subways are tied up or the trains for some reason or another have a delay, don't get panicky that I am going to bawl you out or get angry with you in any way. If you have done what I have asked you to do, to leave your house in plenty of time, you will have fulfulled your obligations so far as you are concerned.

Now, this is not the only matter that I have before me. It is going to have my complete attention while we are here in the courtroom. I have in the past scheduled some appointments for early in

the morning. I know that I have three or four scheduled for tomorrow morning and they may run beyond 9:30, so I may be a few minutes late in getting started here, but I expect you to be here because if those attorneys in those other cases are here early and we conclude that business, we will start promptly at 9:30.

Now, don't let anybody at home discuss this case with you or don't you discuss it with them. You are going to be seeing here the witnesses yourselves and they can't tell you as to how a witness has behaved on the stand.

I have some strict rules of my own on how I run my courtroom. When an oath is administered to a witness I expect everybody to put everything else aside and pay attention to the administration of the oath to the witness.

When the jury files in and files out I expect everybody to remain seated in the courtroom until the jury has filed in and out, and when we recess for noon and for the afternoon, I expect counsel to remain in the courtroom and not to be out in the aisle while you are going up and down in the elevators. Counsel are not permitted to talk with

jurors during the course of the trial, so if they happen to pass you in the corridor or on the street and don't acknowledge that they know you are there and nod their head, that's because they have been instructed so by me. You are to be faceless to them and that's the way it is to be.

When I have objections made by counsel, I expect merely to have an objection made and no argument on it unless I call for it and unless there is a specific rule of evidence that should be called to my attention at the time and then I will look at it and see whether I shall reverse my ruling. If at the conclusion of a session counsel believe that they have anything that they ought to argue to me about any rulings that should be done in the absence of the jury, bring it up at teh recess, but not before the jury. I want the jury to hear as much as possible only the factual issues and not legal argument of counsel.

All right, Mr. Lowe.

MR. LOWE: Thank you, your Honor.

Counsel for the defense, ladies and gentlemen of the jury:

As his Honor has told you already, my name

is John Lowe and I am an assistant United States attorney in this district and it is my duty to present to you the case on behalf of the government of the United States against the defendants charged in this case, William Rodman and William Rosenberg.

As you know, this is a criminal case. The defendants are charged with a crime. The crime with which they are charged is called conspiracy. At the end of the trial his Honor will spend a fair amount of time going into detail as to exactly what is meant and what must be proved in order to establish the crime of conspiracy, but in order to set some framework for your consideration of the evidence that you are about to hear let me just give you a very oversimplified definition of conspiracy.

Conspiracy, ladies and gentlemen, in a nutshell, is a partnership in crime. The charge in this case is that Mr. Rodman and Mr. Rosenberg had a partnership agreement, that acting together they would seek to violate the antifraud provisions of the securities laws and the mail fraud statute.

Now, an opening statement such as I am making to you right now, as his Honor has already told you, is not evidence to be considered by you.

You might think of it in this fashion: Assume you were planning to go on a trip to places you had never been before and you were going to go by car, you might get out your roadmaps, you might get out some tour guides and you would check the route you intend to follow. You would look for recommended places to stay along the way and things of that nature. After you ha- done all that you really would not have any idea exactly what it was goint to be like, but you would know what was coming, more or less knowing what to expect, and when you passed on the road some sort of landmark or signs you would recognize the meaning of those signs, that they were pointing in the direction that you wanted to go. Or if they weren't, you would wonder about it.

An opening statement is very much like that. In order that you have some idea where we are going to go for the next couple of days I am going to draw you a little map that tells you what the government expects to produce by way of evidence, what the witnesses are expected to say when they testify, what some documents are expected to show, things of that nature.

When it is all over I will speak to you

again and that one will be sort of sitting back in your living room when the trip is over and reviewing your sourvenirs, but this is the initial stage and basically all I am giving you is an idea of where we are going.

Now, the charge in this case is that these two defendants, Mr. Rosenberg and Mr.Rodman, had a plan to defraud the public and in a fraudulent manner sell to the public securities, the common stock of a company known as Franklin Properties, Inc.

Now, the evidence is going to show that Mr. Rosenberg was a trader at a brokerage firm known as John R. Maher Associates, Inc., and you will learn from the evidence that a trader is a person who basically buys and sells stock every day, usually several times a day, many times many times a day. His business is to buy and sell securities for his firm and for the customers of his firm and he generally deals with other brokers in doing that.

You are going to learn that Mr. Rosenberg's firm and Mr. Rosenberg specifically was making a market, that is holding himself out as being ready to buy or sell the stock of Franklin Properties.

You are also going to learn that Mr. Rosen-

berg in one way or another accumulated roughly 150,000 shares of the stock of Franklin Properties.

Now, you are going to learn that Mr. Rosenberg and Mr. Rodman had a common friend, someone that they both knew before they knew each other. That man is Leon Nash. Leon Nash will tell you that he is in the business of arranging business mergers. For those of you who don't know what a merger is, a merger to a business is much the same as a marriage is to people and Mr. Nash is like a marriage broker. He brings businesses together, and if they make a successful marriage of the business, he gets paid for doing it.

You are going to learn that Mr. Rodman here approached Mr. Nash and told Mr. Nash that he had an interest in or had represented someone who had an interest in some property in Florida and that he was looking to arrange a merger with a publicly-traded real estate company.

Mr. Nash, who also knew Mr. Rosenberg, knew that Mr. Rosenberg had an interest in and was connected with the business of Franklin Properties, which was, among other things, a real estate company. For that reason Mr. Nash will tell you he arranged for Mr.

Rodman and Mr. Rosenberg to get together.

I think the evidence will show that ultimately no merger ever took place, at least not the intended one.

However, not too long after the introductions we have another character that enters the scene, another signpost along the way.

T2 And that is a man by the name of Kenneth Noonan. Mr. Noonan was an associate, business acquaintance of Mr. Rodman going back quite a few years -- four or five years, thereabouts -- in the securities business. Mr. Noonan, during the time that is important to this case, which is basically November and the first week of December of 1975, was employed by a brokerage firm, stock brokerage firm calledLeyner, Dreskin & Company. Mr. Noonan was a registered representative. You will learn that a registered representative in the the brokerage business is a person who buys and sells stock for his customers, his retail customers, members of the public. Mr. Noonan was employed in that capacity.

During November of 1975 Mr. Rodman, in the course of telephone conversations between himself and Mr. Noonan on several occasions told Mr. Noonan that he had a securities deal in the works, and solicited Mr. Noonan's interest, asked Mr. Noonan whether he would be interested in participating in such a deal. He did not give him any details at all at this point.

And you will learn that in one conversation Mr. Rodman told Mr. Noonan that this Mr. Nash, whom you have already heard about, might be involved in this deal.

Finally comes the critical date, and that date

is December 3rd, 1975. On that day, in a telephone conversation between Mr. Noonan and Mr. Rodman, you will learn that Mr. Newman first learned from Mr. Rodman of the details of the deal that was proposed, and the details were these:

Mr. Rodman told Mr. Noonan that if Mr. Noonan were able to persuade his customers to buy the stock of Franklin Properties at $1 per share, Mr. Noonan would get a payoff, a bribe, an under-the-table compensation of 50 cents per share.

Mr. Noonan asked Mr. Rodman, among other things, "How can I be sure I am going to get paid?"

And you might find that when you learn some of the evidence that will come out that this is a sort of logical question, because you are going to learn that Mr. Noonan has a little bit of antagonism to Mr. Rodman and believes that in the past Mr. Rodman had cheated him. As a matter of fact, Mr. Noonan got so mad at Mr. Rodman at one time that he put a gun to his head to try to collect some money from him. So you might find it a kind of natural thing that he would ask that question.

When he asked that question, "How can I be sure I will get paid?" Mr. Rodman told him, "I will put you in touch with the other guy to make those arrangements."

And that is what happened on December 3rd, ladies and gentlemen.

On the morning of December 4, 1975, Mr. Noonan did something a little bit unusual. You are going to learn that having had this deal proposed to him, Mr. Noonan did not run out and start to try to interest his customers in the stock; instead, Mr. Noonan called up the United States Attorney's Office here and told about what was going on, and that thereafter he received another call from Mr. Rodman in which Mr. Rodman told Mr. Noonan that he should call Bill, and he gave him a phone number to call this person Bill at, and that Bill would tell him the rest of the details.

After reporting this latest development to the United States Attorney, Mr. Noonan went ahead and called Bill. Bill, you will learn, ladies and gentlemen, is the other defendant in this case: William Rosenberg.

Mr. Noonan went ahead and called Bill, and you will learn that he told Bill that, "I am Kenny, and Bill Rodman told me to call you about Franklin Properties," -- nd when he did that you will learn that Mr.Rosenberg told Kenny, "Uh, yes, Franklin Properties" -- he reiterated the deal -- "Sell it for a dollar to your customers, and you will get 50 cents under the table for doing so;

and, yes, you'll get paid; you will have to pay a little to launder the money so it can't be traced, and so forth."

Thereafter two more events of significance took place.

On the evening of December the 4th, Mr. Noonan, in the presence of and with the assistance of an employee of the United States Attorney, made a telephone call to Mr. Rodman at his home and discussed what had happened that day in general, and you will learn that during the course of that conversation there was a tape recorder going, with a microphone attached to the telephone, and the conversation was recorded.

The next day, December the 5th, again in the company of an employee of the United States Attorney, Mr. Noonan made a telephone call to Mr. Rosenberg, and you will learn that that phone call also was recorded, and that during the course of those calls the deal was discussed and various aspects of it, and things of that nature.

Now there will be, in addition to the evidence which I have just described to you in a general way, other evidence, some documents, some things relating to who owned stock, and things of that nature; but the basic story is the one that I have told you.

That is what the government's proof will be during

the course of this trial.

Now remember what I told you, the indictment charges a crime to violate the law. Basically, ladies and gentlemen, the agreement here contemplates, we will prove, that the customers who were going to ultimately buy this stock for a dollar would not be told about the big payoff to Mr. Noonan; that half the money that they were being asked to pay for that stock was going to be given to the guy who recommended that they buy it; and that, ladies and gentlemen, is what we call misrepresenting the facts to the people -- that is why it is wrong.

Now there will be, I predict, a fair amount of noise made about Mr. Noonan. Mr. Noonan, you will learn, among other things, has been convicted of a crime in the past. You will learn that Mr. Noonan for a period of time was an informant for a government agency, and that over the period of time that he was an informant he got paid a certain amount of money for giving information.

You will learn that at the time Mr. Noonan was engaged in the activity, which he will relate to you from the stand, he was under indictment over in Brooklyn, and you will learn that in some respects Mr. Noonan is not the most savory character in the world; and there may be one or two other government witnesses about whom you will learn that they have somewhat an unsavory background also.

I mention this only in the sense of being complete. That is probably what you will hear.

Having heard all of it, and having paid the careful attention to it that I am sure you will pay, and having listened to the entire case, the government is reasonably sure when you go in to deliberate, when that time comes, that you will be satisfied beyond any reasonable doubt that Mr. Rodman and Mr. Rosenberg, the defendants in this case, are guilty of the crime of which they are charged.

Thank you very much.

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MR. BERGER: Your Honor, the defendant William Rodman waives opening.

THE COURT: Very well.

MR. AIDALA: May it please the court, Judge Gagliardi, Mr. Berger, Mr. Rodman, Mr. Rosenberg, Prosecutor Low, Miss Farrell, Madam Foreperson and ladies and gentlemen of the jury:

My name is Louis Aidala and I am the attorney who represents Mr. William Rosenberg. At this point in the trial the law provides me, as Mr. Rosenberg's attorney, with the opportunity of making an opening statement to you. The reason I say opportunity is that unlike the prosecutor, I do not have to make an opening statement to you. The prosecutor, however, must, our law says, make an opening and the reasoning for that, the rationale, is that the prosecutor who has adopted the accusation leveled at Mr. Rosenberg and Mr. Rodman, the prosecutor has the full burden of sustaining that accusation and proving it beyond a reasonable doubt. As you have just heard moments ago, beyond any and all doubt.

The reason why a person accused doesn't have to make an opening is because a person who is accused does not have to prove anything. He doesn't have

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to prove his innocence because our law says that he is presumed to be innocent. If at this very moment, after hearing the prosecutor's opening remarks to you, the judge were to ask you to deliberate, you must, you would have to come back with a verdict of acquittal, because as you sit here now the defendants are presumed to be innocent and you would be in violation of your oaths if you failed to feel throughout this trial that they are presumed innocent and keep that presumption until, if ever, when you deliberate you feel it no longer exists.

Now, you heard the judge tell you that that indictment is proof of nothing. Well, it proves one thing. It proves that the two gentlemen seated at that table have been accused. Draw the analogy -- I don't know whether anyone here has ever been sued, but it is really no different except that this is a criminal case and the other is a civil case. If any of you have ever been sued and you received the complaint and you read the charges that were leveled against you, the accusations that were made against you, the fingers that were pointed against you, you then were a defendant and under the law you were required to come into the courtroom and be present just as Mr.

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Rosenberg must be present in the courtroom. Because you are accused doesn't mean that it is valid or that there is a shred of truth to it. It doesn't mean that you then would have to get up and prove your innocence. Quite the contrary, it means that the person who is making the accusation must establish the accusation and in a criminal case it must be established beyond any reasonable doubt.

Therefore, with that indictment, since the presumption of innocence exists, it is equivalent to saying that you will presume throughout the trial that the accusasions are not valid.

Now, although our law says that the person accused doesn't have to make an opening, he doesn't have to do anything whatsoever except sit in the courtroom, nevertheless I feel that the jurors are entitled to know all of the relevant facts on a matter which will be maybe one of the most important if not the most important decisions you will make in your entire lives. I am going to state to you what I believe the evidence will show in this case. You heard the prosecutor mention Ken Noonan, and well he must, because you will find out by the evidence that Ken Noonan is the source of the accusation against these

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two gentlemen, that this case revolves around Ken Noonan. You heard mention made about the fact that Ken Noonan had a criminal case against him and, yes, you will find that there was an indictment in Kings County, New York for the unlawful possession of a firearm, a gun, which is now in the possession of the New York Police Department.

The evidence will prove that that case, that felony case for which Kenny Noonan was facing many years imprisonment was pending in Kings County. It will prove that he needed help on that case, because despite the motions made by his counsel, motions to dismiss the case, his counsel had lost, those motions were denied, the district attorney was preparing to bring him to trial. That's the posture that Kenny Noonan was in this past end of November, beginning of December, 1975. Have no doubt whatsoever as to the bearing that that case had on the state of mind of Kenny Noonan and what it caused him to do in this matter.

You will find out, I think, through the evidence that he was very knowledgeable and has been knowledgeable about how to take care of himself, how to protect himself in the difficulties he has found

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himself in with the law by bargaining. But in order to successfully bargain one must have something to offer. It is referred to in the law as the quid pro quo. If you want something you have to come forward and indicate that you have something that may be of value to someone else. You have to convince that person that it is something of value.

MR. LOWE: Your Honor, I believe --

THE COURT: This is argument, yes. Confine it to the facts.

MR. AIDALA: The evidence will also prove to you that during the time period that's critical, early December of '75, Kenny Noonan was still subject to the crime and to the charge of attempted robbery and possession of a gun as explained to you by the prosecutor before, as a result of his having taken Mr. Rodman to the waterfront in New York, turning around and pointing a gun at his head, trying to force money from him.

As a matter of fact, at this very moment, as I speak to you, ladies and gentlemen, Kenny Noonan is still subject to being possibly arrested and indicted for that crime or crimes.

So the evidence will show that in the

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critical point of time, early December, 1975, Kenny Noonan had a criminal matter, a felony matter in Brooklyn hanging over his head, which was being prepared to go to trial. We will show that he also had the possibility of being charged with a crime against Mr. Rodman.

The evidence will also prove, we will show to you, that when questioned about any other criminal acts he committed, he has taken the Fifth Amendment, he has refused to answer on the grounds that it may tend to incriminate him. Now, that's his right, but it becomes very important to you in the hearing, the state of mind he had when he did what the evidence will show he did in December of 1975, because the evidence will establish that on those critical days Kenny Noonan's state of mind, his belief was that he had to create something which would give him a bargaining point, giving him a position to offer something in order that he could get something in return.

Now, the evidence will prove that when in early December, as you heard before, Kenny Noonan came to the U. S. Attorney's office he, in his mind, hoped that he would receive help from the U. S. Attorney's

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office on his Brooklhn case. He hoped that he would be getting that case dismissed, but the evidence will show, ladies and gentlemen, that although that was his hope, although that was his rationale, in fact the U. S. Attorney's office refused to intervene on his behalf.

Keep in mind that Kenny Noonan at that point was committed to the course of action that he had created. But the evidence will show that Kenny Noonan, the resourceful individual that he is, didn't stop there. He is a shopper. Because lo and behold, we discovered in January of this year, as the evidence will show, that criminal case, that felony case in Brooklyn, which the district attorney was preparing to try him on was dismissed. The evidence will show that Kenny Noonan tried to create the impression that that was normal, that was going to happen, the DA was going to dismiss it, but the evidence will show, however, that last week, as a result of my going to the Brooklyn Supreme Court, it was discovered that the case had been dismissed and the record had been sealed. In other words, we couldn't see it. The evidence will show that last week for the very first time all of us -- and when I say all of us, I

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mean the prosecutor --

MR. LOWE: Your Honor --

THE COURT: Sustained.

MR. AIDALA: The evidence will show that some agency intervened on behalf of Kenny Noonan and he accomplished what he had hoped to accomplish, the case in Brooklyn was dismissed. Some other agency was willing to do what the U. S. Attorney's office would not do, some other governmental agency did what the U. S. Attorney's office felt was not proper to do.

Now, what did Kenny Noonan do to get that agency to intervene, what possible situation did he create? What possible innocent persons are now suffering for what Kenny Noonan did to save his own neck?

THE COURT: You ought to confine yourself to statements. Really, I indicated that an opening statement is merely to outline the facts. It is not to be argument or legal discussion at all. This is just what you expect to prove, that's all that's required now.

MR. AIDALA: I think the evidence will how, ladies and gentlemen, that you will know what

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agency that is, that you will not know because Kenny Noonan has refused to tell us and I expect the evidence will show will refuse to tell you what agency that is or how he got involved with the agency or what possible criminal acts he committed to be initially connected with the agency.

The reason I mentioned that to you is that it is important that you consider his state of mind, his fears, his concerns for what could happen to him at the end of November and early December of 1975. Keep in mind when you listen to the judge's charge about reasonable doubt being based not only on the evidence but the lack of evidence, what you are not told.

Now, the accusation against the two gentlemen present in court today is that they, these two gentlemen together and no one else, because the government concedes no other co-conspirators, no one else but these two gentlemen together, had an agreement, an agreement to defraud the public, an agreement to defraud the public by selling approximately 150,000 shares of a stock known as Franklin. Not an agreement between either of the gentlemen and Kenny Noonan. No, it must be and the charge is that it is an agreement between these two gentlemen. There will

be more of that later at the end of the case, but the evidence I think will show that what took place here took place within just a few days. The evidence will show that 150,000 shares was mentioned for the first time on Friday, December 5th. I submit to you the evidence will show that that following morning, based on the accusation that Kenny Rodman made in a signed statement, Mr. Rosenberg was placed under arrest. Not Mr. Rodman, but Mr. Rosenberg.

So on Friday, the 5th, the evidence will show 150,000 shares was mentioned for the first time and then Mr. Rosenberg was arrested.

Now, that is important because the government must prove that these two men agreed to 150,000 shares and the evidence will show that never, never was there any mention of 150,000 shares to Mr. Rodman, never was he part of a conversation concerning 150,000 shares and if for the very first time 150,000 shares was mentioned on Friday, December 5th, then obviously before that time there could have been no conversation about 150,000 shares.

There will be no evidence, I submit to you, ladies and gentlemen, that will establish, and all of the elements must be established, that the two gentlemen

agreed to go to defraud public for 150,000 shares of Franklin Properties.

Intent is going to be something extremely important. The intent of Kenny Noonan in doing what he did, the intent of anyone else who said what he said. The government will make no bones about the fact that Kenny Noonan lied when he said things on the tape.

Now, that in a very general fashion is what I think the evidence will show during the course of the trial. As you can see it is somewhat different than the picture that the prosecutor painted for you. At the conclusion of this case I think each of you should realize and appreciate the rather horrible experience of having to sit as a defendant in a case and being wrongly accused.

THE COURT: Yes, sustained.

MR. AIDALA: I think after the case is completed you will learn that if you have but one reasonable doubt, it is your absolute duty to acquit and if you follow his Honor's instructions to the letter after you analyze all the evidence and the lack of evidence, after you perform your sworn duty faithfully, I am sure that you will return to this courtroom with a verdict of acquittal for both defendants.

Thank you.

THE COURT: All right, members of the jury, we will suspend for the evening. Remember, as I told you before, nothing that counsel says is evidence in the case, that would come from the witnesses and the documents. You are going home to your houses this evening, and you may be interested in talking with the other members of your family or the memgers of the household about what they did today and they may be inquiring about what you did today. Remember that it is most important that you not talk about this case. Don't discuss it with them.

When you come in in the morning you will go right to the jury room and don't discuss it in there. Hopefully we can resume very close to 9:30. This is courtroom 301. I am Judge Gagliardi. In case you get lost some of the personnel may know where courtroom 301 is.

So have a pleasant evening and we will see you at 9:30 in the morning.

(Adjourned to March 25, 1976, at 9:30 a.m.)

UNITED STATES OF AMERICA
vs. 76 Cr. 43
WILLIAM RODMAN and WILLIAM ROSENBERG.

New York, March 25, 1976;
9.30 A.M.

Trial resumed.

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(Jury in box.)

MR. LOWE: The government calls Lewis Scala.

L E W I S S C A L A, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Scala, what is your occupation?

A I am a stock broker. I am a registered rep, and I am also a cashier of John R. Maher Associates.

Q Is that John R. Maher Associates, Inc.?

A That is correct.

Q Mr. Scala, I will ask you to keep your voice up; I am having a little trouble hearing you, and it is possible some other people might.

A Okay.

Q Mr. Scala, how long have you been employed by John Maher Associates?

A About a year and three months.

Q Mr. Scala, directing your attention to these books which have been marked Government's Exhibits 7, 7-A and 7-B for identification (handing), are these books and records made and kept in the ordinary course of business of John R. Maher Associates?

A For the customers' transactions, yes.

Q And is it the ordinary course of business of John R. Maher Associates to make and keep such records as this?

A Yes.

Q What kind of records are those?

A These are customer records pertaining to customer transactions, when they bought and sold securities.

Q And just generally what kind of information, without giving us any specifics as to any particular entry -- what kind of information is recorded in those books?

A Trade -- settlement dates of securities bought and sold to customers; price customer paid; amount of money received from customers for payment, or amounts of money issued to customers for sales.

Q And of course the name of the security.

A The name of the security.

Q Does it also reflect the actual delivery of

securities into and out of the account?

A Yes.

Q And for what period of time are these records -- for what period of time are these records?

A (After examining) Later part of 1974, all of 1975 up until present, 1976.

MR. LOWE: Your Honor, I will be offering pages from these records at a later date.

At this time I will solely ask whether there is an objection as to the authenticity of the records.

MR. BERGER: No objection, your Honor.

MR. AIDALA: No objection to that.

BY MR. LOWE:

Q Mr. Scala, directing your attention to Exhibit 7-C (handing), I will ask you, are those records made and kept in the ordinary course of business of John R. Maher Associates?

A Yes.

Q And is it the ordinary course of business of John R. Associates to make and keep such records as that?

A Yes.

Q What kind of records are they?

A This is a customer data card information. It is all data pertaining to a customer when he opens a new

account at the firm.

Q And in the ordinary course of business there should be one card for each customer, is that right?

A That is correct.

MR. LOWE: Once again I will ask whether there are any objections as to authenticity.

MR. BERGER: No objections as to authenticity.

MR. AIDALA: When he says "authenticity," I assume he means no objection --

THE COURT: Of course, first of all, he cannot offer them now because he hasn't established anything. He wants to know if when he is going to offer it you are going to object on relevancy.

MR. AIDALA: No objection to the fact that these are records of John R. Maher Associates.

THE COURT: Very well.

Q Mr. Scala, at this time I would like for you to look at what has been marked Government's Exhibits 8, 9 and 10, all for identification (handing), and I will ask you to tell me if you recognize the signatures (handing)?

A (Witness examines.)

MR. AIDALA: Judge, I will object on the grounds that he is asking him to testify about something not in evidence.

THE COURT: He is just asking him if he recognizes the signatures.

MR. AIDALA: Just so the witness understands all he has to answer is "Yes" or "No."

THE COURT: All he has to answer is whether he recognizes his signature on that card -- not whose signature it is but whether he recognizes it. That is all that is called for.

A Yes.

Q Whose signature is on those documents?

MR. AIDALA: Objection, your Honor.

THE COURT: Are you questioning whether or not he has sufficient knowledge, to determine whether or not he recognizes that signature or not?

MR. AIDALA: That wasn't the question; that was the prior question. I am objecting on the ground --

THE COURT: No. I am asking you if you question the fact that he has seen the signatures often enough to recognize them.

MR. AIDALA: That was the prior question, Judge. This is a new question.

THE COURT: Then he can state that he is qualified to express an opinion, as a handwriting analysis of this signature. You are not raising that objection?

MR. AIDALA: I did not object to him saying he recognized it. I object to any testimony on something not in evidence.

THE COURT: No, I will overrule it.

(Question read by the reporter.)

A John R. Maher, William Rosenberg on some of them, and John R. Maher & Sons.

MR. AIDALA: Judge, I now respectfully move for a mistrial on the ground that there has been testimony about something not in evidence.

THE COURT: Motion overruled.

BY MR. LOWE:

Q Mr. Scala, do you know William Rosenberg?

A Yes.

Q Do you see him in the courtroom?

A Yes.

Q Point him out for the record, please?

MR. AIDALA: I had conceded.

THE COURT: Conceded. Very well.

Q Who is Mr. Rosenberg?

A He's the trader at John R. Maher Associates, Inc.

Q How long have you known him?

A About four years.

Q You've testified that you were a registered representative at John Maher Associates?

A Yes.

Q Tell the jury what a registered rep does?

A They handle transactions with the public. We buy and sell securities for the public.

Q You also testified that you are now the cashier?

A Yes. Cashier and bookkeeper.

Q Tell the jury what the cashier does?

A The cashier's function is to see that all securities that are bought and sold for customers are properly delivered and executed to the buying broker or delivered to the customer for whom they were purchased. They also maintain the books such as those, keeping them up to date with postings, and general things to that area.

Clerical function work, in other words.

Q Mr. Scala, when John Maher Associates sells stock to another broker, does John Maher Associates send any kind of notice of that transactionto the other broker?

A Yes. We send a confirmation.

Q How is that confirmation sent?

A By mail.

Q Is it always sent by mail.

A I would say generally, yes.

Q Mr. Scala, how many employees are there at John Maher Associates by the name of Bill?

A One.

Q Is that William Rosenberg?

A Yes.

MR. LOWE: I have no further questions.

CROSS EXAMINATION

BY MR. BERGER:

Q My name is Mr. Berger and I represent Mr. Rodman.

You testified that confirmations are sent by mail, is that correct?

A That's correct.

Q When Mr. Lowe asked you they are always sent by mail, you answered generally, is that correct?

A That's correct.

Q Isn't it a fact that on many occasions confirmations are hand-delivered?

A Could you clarify that. Are you referring to John Maher Associates?

THE COURT: Yes.

Q John Maher Associates.

THE COURT: Do you know how many, if any?

A No.

Q They are never hand-delivered?

A There might be one instance, isolated, but generally speaking they are mailed. They can be hnd-exchanged?

Q They can be?

A Yes. I can't pinpoint how many I have hand-

exchanged? I don't recall.

Q You have hand-exchanged some?

A To the best of my knowledge, no.

Q Di you know if anybody else in the firm has ever hand-exchanged any?

A I on't know.

Q There is no rule that you know of against hand-exchanging, is there?

A It's a practice in the Street.

Q It's a practice in the Street?

A Yes.

MR. BERGER: I have no further questions.

CROSS EXAMINATION

BY MR. AIDALA:

Q Mr. Scala, is it not a fact John Maher does not use a computer in its business?

A That's correct. We do both.

MR. AIDALA: May I see Government's Exhibits 8, 9 and 10.

MR. LOWE: Here they are.

(Pause.

Q When did you begin to work at John Maher?

A January, '75.

A January, '75.

Q Was John Maher there in January of '75?

A No. He was not.

Q If all the dates on those checks are before January of 1975, namely, 1974, isn't it a fact that you could not recognize the John Maher signature on the checks?

A I don't recall saying I did recognize John Maher's signature.

Q In other words, your testimony is that you do not recognize John Maher's signature?

A That's correct. I do not.

MR. AIDALA: No other questions.

THE COURT: Anything further?

MR. LOWE: I neglected to ask a couple of questions.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Do you know William Rodman?

A No, I don't.

Q Have you ever had occasion to call William Rodman on the telephone from the offices of John Maher Associates?

A No, I have not.

Q With regard to the signatures on Government's Exhibits 8, 9 and 10 for identification, you do recognize the signature of William Rosenberg?

A Yes.

THE COURT: He so testified.

MR. LOWE: Nothing further.

RECROSS EXAMINATION

BY MR. BERGER:

Q Is it a common occurrence for individuals to come walking in and out of the offices of John Maher, customers and other people?

A No, it is not.

Q On occasion do they in fact come into the office and meet with the customers' men?

A Yes.

Q On those occasions have any of them made telephone calls?

A I guess so.

Q Do you know every customer that has come in in the past four months that has made a telephone call from John Maher Associates?

A No, I don't.

Q Do you know for a fact that customers have come in in the past four months and used the

John Maher phone?

A Yes.

RECROSS EXAMINATION

BY MR. AIDALA:

Q Mr. Rosenberg would not make any of the entries in those books marked for identification, is that correct?

A That's correct.

Q Are you aware that all those books have been subpoenaed and have been in the government's possession for the last month or so?

A Yes.

MR. AIDALA: No further questions.

THE COURT: You may step down.

Next witness.

(Witness excused.)

MR. LOWE: The government calls Victor Quidri.

(Pause.)

MR. LOWE: The government calls Kenneth Noonan.

JAMES KENNETH NOONAN, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Noonan, what was your occupation during November and early December of 1975?

A I was a salesman for Leyner, Dreskin & Company.

Q What kind of company is that?

A A stock brokerage firm.

Q Were you a registered representative?

A Yes.

Q What is that?

A Supposed to solicit buy and sell orders from the public for various securities.

Q Do you know the defendant in this case William Rodman?

A Yes.

Q Do you see him here in the courtroom?

MR. BERGER: Identification conceded, your Honor.

THE COURT: All right.

Q How long have you known him?

A 1971.

Q During the period you have known Mr. Rodman have you done any business with him?

A Yes.

Q What kind of business?

A Stock business. Buying and selling stock.

Q Directing your attention to the month of November of 1975, Mr. Noonan, did you have occasion to speak to Mr. Rodman during that month about a securities deal?

A Yes.

Q When and where was the first such conversation?

A Some time in the latter part of '75, at my home, on the telephone.

Q What was the conversation at that time?

A Mr. Rodman indicated that there was a stock deal he was involved in and would I be interested in, in participating.

Q What, if anything, did you say?

A I said yes, I would listen, I would be interested.

Q Were you given any details at that time?

A None.

Q Did you have any other conversations with Mr. Rodman during the month of November of 1975 of the same nature?

A Yes, several of them.

Q Did Mr. Rodman ever mention any other people in connection with the deal?

A Yes. He mentioned a fellow by the name of Leon Nash.

Q What, if anything, did Mr. Rodman say to you about Leon Nash?

A He asked me if I would be adverse to participating in something where Leon Nash was involved.

Q Had you ever done business with Leon Nash?

A No.

Q Do you know him?

A Yes.

Q How many times have you ever met him in November of 1975?

A I had met him maybe three times personally. It had been quite a while ago.

MR. BERGER: The answer was not responsive to the question.

THE COURT: How long have you known Mr.

Nash?

MR. BERGER: I think the question was how many times did you meet him in November.

THE COURT: Let's have the question.

Q The question was: as of November of 1975 how many times had you met Mr. Nash?

A Two or three times.

Q How long before November of 1975 had that been?

A The last time I saw him, I believe, was the winter of 1973.

Q Did there come a time when Mr. Rodman told you the details of this securities deal he had told you about?

A Yes.

Q When and where did that conversation take place?

A I believe it was December 3rd at my home on the telephone.

Q Who called whom?

A Mr. Rodman called me.

Q What was the conversation when Mr. Rodman called you?

A He told me to go to a safe telephone and

call him back and gave me a telephone number. I waited a few minutes and then I called him back from my own telephone.

Q What telephone number did he give you to call him back on?

A I don't remember. It was a 607 area code

Q Did he give you any other information about calling him back?

A He said to ask for a particular room number when I called.

Q Do you recall the number?

A No.

Q Did you call this telephone number in the 607 area code?

A Yes. It was a Holiday Inn.

Q Did you ask for the room number?

A I asked for the room number and was connected with Mr. Rodman.

Did you speak to Mr. Rodman?

A Yes.

Q What was your own telephone number in December of 1975?

A 836-0023.

Q What was the conversation between yourself and

Mr. Rodman when you called Mr. Rodman back on December 3, 1975?

A He outlined a securities deal, again stating the name of the stock was Franklin Properties. The stock was about $1 a share. For every share of stock I induced my customers to buy he would see to it that I got 50 cents a share in cash.

Q Do you remember whether Mr. Rodman said anything else at that time?

A I believe he told me to check the market place to find out the price of the stock and to call him back, and I did this.

I called him back and told him the stock was only about 50 cents a share or 60 cents a share. He said, "Don't worry. When the time comes to buy it it will be $1."

So I asked him how I was going to get paid this 50 cents a share, and he said he would try to put me in touch with the party involved in the deal at a later date, and don't worry, I would get paid.

Q Did you have any further conversation with Mr. Rodman later that day or very early the next day?

A Yes, I did. I just reviewed --

Q Wait a minute. Just answer the question. You did.

A Yes.

Q When did you have such a conversation?

A It was very late that night; possibly after midnight.

Q Where did you have the conversation?

A From a friend's house.

Q Did you call Mr. Rodman?

A Yes.

Q Where did you call him?

A At the Holiday Inn.

Q What was the telephone number you called him from?

A I believe it was DE6-3819.

Q What was the conversation you had with Rodman on that occasion?

A We just reviewed the previous conversation.

Q What is the next thing you did in connection with this matter?

A Next morning I called the United States Attorney's office.

Q What did you do?

A I talked to you and I told you what had

transpired in the last few days. And I asked what you thought I should do.

Q What's the next thing that happened after that?

A I got a phone call from Mr. Rodman and he told me -- he gave me a telephone number and told me to call the fellow at this number, the fellow's name was Bill, and tell him that Mr. Rodman said to call him, and he would explain anything further that I wanted to know about the deal.

(Continued on next page.)

T3 Q What was the telephone number that Mr. Rodman gave you to call?

A I don't know.

Q When you say you "don't know," do you mean you don't remember?

A Yes, I don't remember. If I saw it I would probably remember.

Q What did you do after that call?

A I called you back.

Q And what did you do when you called me?

A I told you the other fellow involved in the deal, I was given his number and so forth, and you said, "Go ahead and call him up if you want."

Q What did you do then?

A At which time I called him up. I asked for Bill, because somebody answered the phone and said, "John Maher" -- it was John Maher Associates, I guess, the brokerage firm. Then I asked for Bill, and after a time a fellow named Bill got on the phone. I said, "My name is Ken. Billie said to call you about the deal."

He went into a discussion about the Franklin Properties and how the stock would be a dollar and for every share I bought he would give me 50 cents in cash less 5 per cent for laundering the money, and he mentioned

as long as I could direct any buy orders I had in the stock to John Maher I would be sure of purchasing the stock at one dollar.

Q What does it mean to direct the purchases?

A To tell the order clerk in the firm to buy the stock for a particular dealer.

Q Mr. Noonan, as a registered representative are you familiar generally with the rules and regulations government your business?

A Yes.

Q Do you have to pass a test to become a registered representative?

A Yes.

Q And as part of that test is the familiarity with the rules and regulations?

A Yes.

Q What are the rules with respect to what a broker should do when seeking to purchase stock for a customer?

A Well, he should get the best possible price, the cheapest price for a buyer and the highest for a seller regardless of who he deals with.

Q Did you speak to this person Bill again on that day, December 4th?

A No, I didn't.

Q Did you make any attempts to speak to him?

A Yes, I called him at his office. He wasn't in. I also called him at his home and he wasn't in at that time either.

Q Did you speak to Mr. Rodman on December the 4th?

A Yes, I did.

Q When and where did you speak to Mr. Rodman?

A At his home; it was about 8 o'clock at night.

Q Where did you call Mr. Rodman from?

A A pay telephone.

Q And specifically where was it?

A In the U.S. Attorney's Office.

Q Was anyone with you at the time you made that phone call?

A Yes, an investigator named Mr. Doonan.

Q Did you make a recording of that telephone call?

A Yes, I did.

Q Will you tell us how that was done?

A Well, Mr.Doonan put a recording device on the telephone, and he also listened in at the same time that I talked to Mr. Rodman.

Q Mr. Noonan, directing your attention to Government's Exhibit 4 for identification, can you identify that (handing)?

A (After examining) Yes, this is a copy of the tape between myself and Mr. Rodman that night.

MR. LOWE: The government offers Exhibit 4 for identification in evidence (handing).

MR. BERGER: No objection for the defendant Rodman.

MR. AIDALA: No objection for the defendant Rosenberg.

THE COURT: Received in evidence.

xx (Government's Exhibit 4 received in evidence.)

BY MR. LOWE:

Q Mr. Noonan, how did it come about that you made that recording of the conversation with Mr. Rodman?

A Well, the U.S. Attorney asked me if I would voluntarily make a recording of the conversation and I said I would.

MR. LOWE: Your Honor, at this time the government would like to play Exhibit 4 for the jury, and the government would like to hand out copies of Exhibit 4-A ror identification for the jury's assistance in following and listening to it.

MR. AIDALA: Your Honor, may we approach the bench on this matter?

THE COURT: No, you can make your statement right there.

MR. AIDALA: Judge, it is something that I have to say at the bench.

THE COURT: All right.

MR. AIDALA: It will be very brief.

THE COURT: All right. I do no' normally encourage conferences here.

(To the jury) It is nothing sinister in any way, members of the jury, but rather than have you file out and then hear the argument, I will just take the argument here; but, as I say, I discourage this, but apparently this is something that has to be held at the moment.

MR. AIDALA: Your Honor, these tapes are the most audible, clear tapes that I have ever heard --

THE COURT: I don't care about that.

MR. AIDALA: Excuse me. The only purpose, if I may finish, your Honor, for the use of a transcript by the jury is where there is a need for assistance by them. There is no claim by the government that these cannot be heard by the jury. The transcripts are not evidence. The best evidence are the tapes.

THE COURT: I am asking, do you have any question about the accuracy of the transcript from the tape?

MR. AIDALA: Oh, no.

MR. BERGER: I do, your Honor.

THE COURT: In what respect?

MR. BERGER: In one place.

THE COURT: Which place? You have had these before. We have been through them.

Where?

MR. BERGER: I have listened to the transcript one hundred times --

May I have your copy?

(Mr. Lowe hands to Mr. Berger.)

MR. BERGER: Top of page 2.

THE COURT: Top of page 2?

MR. BERGER: Where Rodman allegedly says "Receipts and stuff."

THE COURT: Yes?

MR. BERGER: I do not hear the word "Receipts." I hear the word "fees."

THE COURT: "Fees and stuff."

MR. LOWE: I think he is entitled to argue that to the jury. I heard the word "Receipts."

MR. AIDALA: That emphasizes that we should --

THE COURT: At that point I will instruct the jury with respect to that so that they may have it clearly.

MR. AIDALA: I object to them having the transcript.

THE COURT: All right, objection overruled.

(In open court.)

THE COURT: Members of the jury, we are going to play this tape which the witness has identified as an accurate transcript of the conversation that he had on this occasion.

For your assistance in following the tape, there has been prepared a typewritten transcript of this. Now the tape is the actual thing; the transcript here is just to assist you as you go along.

There is some question, and when we come to the point as to a particular word, as to whether what is in this transcript is so or something else, we will replay that a couple of times, and then you make the determination as to what is in here; but the document in evidence is the tape itself. All right.

(Mr. Lowe starts to hand transcript of tape to the jury.)

THE COURT: If you pass some to the front row and some to the back row --

(To jury) And I wish you would not read ahead of time but just follow the tape when it is played with the

transcript.

(Tape played to the jury.)

THE COURT: Will you stop the tape?

(Tape stopped.)

THE COURT: The next word -- a question is raised --

Will you just go back a little bit, if you can, just a very short space and start again?

(Tape played.)

THE COURT: The question is whether that word is "Receipts" or some other word -- that is in question.

If you want to play it once more and then we will continue.

(Tape played until its conclusion.)

THE COURT: All right, and if you will pass those all to your right we will collect them again.

(Jurors hand back transcripts to the clerk.)

Q Did you speak to this person Bill that Mr. Rodman had told you to call again on December 5, 1975?

A Yes, I did.

Q When and where did that conversation take place?

A Pay telephone in this building. It was about noon.

Q Where did you call?

A At his office at John Maher Associates.

Q Was the person you spoke to on December 5th the same person you spoke to on December 4th?

A Yes.

Q Did you make any tape recording on that call?

A Yes, I did.

Q Was anyone with you when you made that recording?

A Mr. Doonan also.

Q Was that recording made in approximately the same mechanical technical manner as the previous one you testified about?

A Yes, it was.

Q Showing you Government's Exhibit 5B for iden-

tification, Mr. Noonan, can you identify this cassette?

A Yes. It's a copy of the conversation between myself and Mr. Rosenberg.

Q You don't know Mr. Rosenberg, do you, Mr. Noonan?

A No.

Q On December 5th, as far as you knew you only knew him as Bill?

A On the fifth I knew him as Bill Rosenberg.

Q How about the 4th?

A No. Not until the afternoon of the 4th did I know his last name.

MR. LOWE: The government offers Exhibit 5B in evidence, your Honor.

MR. AIDALA: I have no objection.

MR. BERGER: No objection.

THE COURT: It will be received in evidence.

(Government's Exhibit 5B was received in evidence.)

xx MR. LOWE: At this time, your Honor, I would like to play Government's Exhibit 5B for the hearing of the jury.

THE COURT: Mark for identification the

transcripts, please.

MR. LOWE: I would also like to distribute for the jurors aid in listening to the tape copies of Government's Exhibit 5A for identification, the transcript.

THE COURT: Is there any question as to the accuracy of this transcript?

MR. AIDALA: No, Judge.

THE COURT: Your objections are still noted in connection with this.

MR. BERGER: Except that part we wanted redacted. I feel it should have been redacted so that it would not be necessary to make the explanation to the jury that we had discussed.

MR. LOWE: There was one redaction which was made and I think the others should remain in and any necessary explanations can be supplied.

THE COURT: All right.

(Transcript distributed to jury.)

THE COURT: In the next statement by Mr. Noonan, if you will read that with me to yourselves, where it says in there, and you are about to hear it, it says, "With Billy it was always a thing where I met him and he just gave me the cash, you know, that

statement is completely false. There is nothing to that statement at all.

Is that satisfactory, gentlemen?

MR. BERGER: Yes, your Honor.

(Tape played.)

THE COURT: Pass the transcripts to the right and we will collect them.

(Pause.)

Q On this most recent conversation with Mr. Rosenberg which we just played, you heard the judge's statement in the middle of the recording about something you had said being not the truth. Is that correct?

A Yes.

Q It's correct that that's not the truth?

A It is.

Q There are a number of things, are there not, which you said to Mr. Rosenberg on that occasion which were not the truth, isn't that right?

A Yes.

Q For example, did you have anyone who wanted to buy 30,000 shares?

A No.

Q Mr. Noonan, when stock is sold to a customer

at Leyner, Dreskin, does the customer receive a notice of that transaction?

A He receives a confirmation in the mail.

Q In the mail?

A Yes.

Q Is that the customary and ordinary practice at Leyner, Dreskin with regard to sending confirmations to customers?

A I believe it's the only way.

Q Mr. Noonan, have you ever been convicted of a crime?

A Yes.

Q Tell us first of all when you were convicted?

A 1967.

Q What were you convicted of?

A Passed a bad check, a few bad checks in California.

Q Were you convicted of the crime of forgery?

A Yes.

Q Was that a misdemeanor or felony?

A Misdemeanor.

Q How old were you at the time?

A Nineteen.

Q Directing your attentionto the period of time in November and December when th facts to which you have testified to here today took place, were you under any indictment at that time?

A Yes, I was.

Q Where?

A In Brooklyn, County of Kings.

(Continued on next page.)

T5

Q In the State Court?

A Yes.

Q And what was the indictment you were under?

A For possessing a gun.

Q Was that a felony charge?

A Yes, it was.

Q Now, did there come a time when that charge was dismissed?

A Yes.

Q When?

A I believe it was January of 1976.

Q Was any person who represented the government of the United States involved in the dismissal of your case?

A Yes.

Q Was that any representative of the United States Attorney's Office for this District?

A No.

Q Was it any representative of the Securities and Exchange Commission?

A No.

Q Did it have anything to do with what you have done in this case?

A No.

MR. LOWE: I have no further questions.

MR. BERGER: May it please the Court.

THE COURT: Yes.

CROSS EXAMINATION

BY MR. BERGER:

Q Mr. Noonan, my name is Mr. Berger. I represent Mr. Rodman. In November -- withdrawn.

When was the last time prior to November of 1975 that you had done any business with Mr.Rodman?

A I believe it was the Spring of 1973.

Q Did there come a time in November of 1975 that you called my office in order to obtain the home phone number of Mr. Rodman?

A Yes.

Q Do you recall when that was?

A No, I don't.

Q And on the particular day that you called, do you recall how many times you called?

A No, I don't.

Q Do you believe you called approximately five times?

A I know it was more than once, but I don't know how many times.

Q And did you speak to my secretary?

A I spoke to a woman in your office, yes.

Q And did you tell her it was very important that you speak to Bill Rodman, that you had something to tell him?

A Yes.

Q In fact, did you tell her it was urgent that you contact him?

A Yes, just because I wanted to contact Mr. Rodman --

THE COURT: Did you tell her it was urgent that you contact him?

THE WITNESS: Yes, your Honor.

Q And do you recall calling more than three times?

A I called more than once. I don't remember if it was more than three or less than three.

Q Do you recall testifying in another proceeding, in the month of March -- March 19 -- I am sorry, the month of March, 1976, in which you were asked the following question -- page 24:

"Q On a day in November do you recall making at least five telephone conversations where you stressed the urgency of reaching Mr. Rodman because you had something to tell him that he had to know? Do you remember that?"

Do you recall that your answer was "Yes"?

A You say it is, Yes; I don't have it in front of

me.

Q Well, was your answer to that question truthful?

A Yes, it was.

Q So that you did make at least five telephone calls and you did stress the urgency of reaching Mr. Rodman, isn't that correct?

A Again I don't recollect if it was five or not. I made more than one call, yes.

Q And isn't it a fact that it was urgent to reach Mr. Rodman?

A Yes.

Q What was the urgency?

A I knew of a piece of property that was for sale at a very attractive price and I wanted to reach Mr. Rodman to see if he was interested.

Q When was the last time that you spoke to Mr. Rodman before November 20th?

A September or October -- about a month or so, a month and a half before then.

Q At that time did he tell you that he had a lot of money?

A He mentioned that he was in the real estate business; he didn't specifically say that he had a lot of money. He says he had access to financing.

Q And where was this real estate located that you wanted to discuss with Mr.Rodman?

A In Brooklyn.

Q And what kind of real estate was it?

A It was a six-family -- a five-family building with a store.

Q And did you give Mr. Rodman the address?

A I don't believe I did, no.

Q Did you tell Mr. Rodman the rent roll for that building?

A I believe I did, yes.

Q What was that rent roll?

A It was about a thousand dollars a month.

Q And did you know the taxes on that building?

A Yes, I did.

Q What were the taxes?

A They were about nine hundred a year.

Q And did you know the cost of repairing the building?

A It was in adequate shape the way it was.

Q Well, did you go over the cost of repairing, maintenance, et cetera, with Mr. Rodman?

A I don't think I did, no.

Q Did you tell him what kind of fuel was burned

in the building?

A No.

Q Do you know if it was No. 2 fuel or No. 4 or No. 6?

A No, I don't.

Q Well, what did you tell him exactly with regard to that real estate?

A I told him there was some property available, and I talked to him about the financing aspect of it, if he could get somebody with a second mortgage maybe we could own the building or he would own it and I could manage it without having to make a down payment.

Q Did you tell him the amount of the mortgage that was required?

A I think I mentioned about $10,000.

Q And what was the amount of the first mortgage?

A Well, the first would have been the balance of the purchase price, about forty or forty-five thousand.

Q So the total price was about --

A Between fifty and sixty thousand.

Q And you wanted Rodman to obtain financing to purchase the entire building all on mortgages, is that correct?

A Yes.

Q And who would own that building?

A Well, we could work it out, whether he owned it and I would own a small percentage in exchange for management of the property, because he didn't live nearby.

Q So that you would be working together on the building, is that correct?

A Yes.

Q Did there come a time that someone in my office or myself gave you Mr. Rodman's number?

A I don't remember if they did or not, because I had his number. I just didn't know where it was.

Q Now, there did come a time, however, that you di call Mr. Rodman, is that correct?

A Yes.

Q And when -- was that the first conversation you had with him -- do you recall the date of that conversation?

A No, I don't.

Q And was that the time that you described this real estate to him?

A Yes, I believe it was.

Q Did you ever send Mr. Rodman any documents on that?

A No.

Q Did he ever ask you for any documents on the deal?

A No.

Q Did he tell you that he was going to someone to see about getting a mortgage?

A He said he had access to financing, and that was it. He didn't say who or what or where or anything.

Q Who owned the building?

A It belonged to an estate. I saw the listing in a broker's office, and the exact owner is not given.

Q Did you send a copy of the listing to Mr. Rodman?

A No. The broker wouldn't even give me a copy to take out of his office.

Q Will you please explain to the jury what a listing is?

A It is a description of the property, where it is, how much the people that own it would like for the house; the number of apartments; the list of the rents; the taxes; fuel, et cetera.

Q Did you inspect the building?

A Yes, I did.

Q Did it have a vacancy factor?

A I believe there was one apartment vacant, yes.

Q And the rent roll of a thousand dollars a month, did that include the vacancy?

A That would include it if the vacancy had been occupied.

Q Was there a superintendent in the building?

A No.

Q Who would act as superintendent in that building?

A It really wasn't necessary because it was a very small building.

Q Had you discussed with Mr. Rodman who would pick up the refuse and put itout in the street every day, and clean the halls?

A I told him I would take care of maintaining the building, whatever had to be done, I would do it or find a way to have it done.

Q When Mr. Rodman told you that he would try to obtain a mortgage for the building did you suggest that you mail him the listing, the breakdown of the income and the expenses?

MR. LOWE: Objection to the form of the question.

THE COURT: Yes, sustained.

Q Did you ever tell Mr. Rodman that you would tell him the listing showing the income against the expenses?

A He did not -- he would give it at the time, just when the time came I would send it to him or copy it down.

Q Do you recall calling Mr. Rodman on Friday, November 21, 1935?

A No, I don't.

Q Did there come a time, the first time you called Mr. Rodman, that he did not get on the phone with you?

A When I called him where?

Q At his home in Spring Valley, on November 21.

A I don't remember calling him on that day. I am not saying I didn't, but I don't remember it.

Q The first day that you called him, did you call him in the morning or in the evening?

A I don't remember.

Q The first day in November.

A I don't remember when it was, you know, whether it was morning or evening.

Q Do you recall whether he got on the phone with you the first time that you called him, after you got his phone number? Do you remember?

A No, I don't remember because several times I had called his house, and, you know, during the period of November, even before then, sometimes he was there, sometimes his wife was there. I don't remember that particular time whether he was there or not.

Q Did there come a time when you on that first phone call that he did not get on the phone to you and you called him back 20 minutes later?

A I dont remember, you know,the specific date or whether he answered when I called him or which time he was there or which time he wasn't.

Q After the first phone conversation did you call him again the next day?

A I don't remember which, you know, consecutive -- whether I called him the next day or whatever day the first conversation took place.

Q Did you call him almost every day from the first day that you called him to discuss the real estate?

A I called him several times. I dont know whether it was every day or not.

Q Did you discuss more than one building with him the first time that you called him?

A I don't remember.

Q Did you perhaps just chat about some real estate in Brooklyn in a nonchalant manner?

A I believe the first time I talked to him I had that one specific building in mind, but there were other buildings of a similar nature in the neighborhood.

Q But basically your reason for wanting to contact Mr. Rodman was because you believed you could have a profitable relationship with him in some type of real estate deal, is that correct?

A Yes.

Q You wanted, in effect, to go into business with him?

A You can put it that way, yes.

Q You would have run the building and perhaps Rodman would own it, or some such relationship.

A Yes.

Q During the entire month of November you had no discussions with regard to Franklin Properties with Mr. Rodman?

A That's correct.

Q You testified that Mr. Rodman had discussed securities with you in November, is that correct?

A Securities deal, yes.

Q Was there anything in that discussion in November to lead you to believe that that security deal was the Franklin deal?

A No.

Q Was there anything in that discussion in November to lead you to believe that that security deal was an illegal deal?

A No.

Q As a matter of fact, the first time that Franklin was ever mentioned, you testified, was December 3rd, is that correct?

THE COURT: Isn't it a fact from the first time you called Mr. Rodman it was you who was the aggressor trying to contact Mr. Rodman and not Mr. Rodman trying to contact you?

MR. LOWE: Objection to the form of the question.

THE COURT: Rephrase the question.

Q Isn't it a fact from the first time you called Mr. Rodman in November you were the one who, for the most part, initiated the telephone conversations and made the telephone calls?

A I really don't know. He called me several times and I called him several times.

Q Up to November 28, 1975, Mr. Rodman had not offered you any illegal deal, is that correct?

A That's correct.

Q Would you say that in that period of time you had at least nine telephone conversations with him?

A I don't remember how many we had.

Q Did there come a time when you learned that Mr. Rodman was in Binghamton, New York?

A I believe he told me he had been there.

Q He told you he had been in Binghamton or he was going to Binghamton.

A I believe he told me he was going there.

Q Do you recall, in relationship to December 3, 1975 when he told you he was going to Binghamton?

A No, I don't.

Q Did he tell you how long he would be gone?

A I don't remember, no.

Q Did he tell you where he would be staying in Binghamton?

A No. Not that I can remember.

Q Did he tell you what he would be doing in Binghamton?

A I don't recall.

Q But you knew he was going to Binghamton?

A He had mentioned once that he was going to Binghamton. He said he was going. When he said he was going, I don't recall.

Q When he left for Binghamton, he did not give you the location or where he was going, he did not give you the date he was going, nor did he give you the date he was coming back, is that correct?

A I just don't remember it. He might have said, "I'm going to Binghamton tomorrow and I'll be back the next day."

I don't remember it.

Q Did he tell you where he would he staying?

A No.

Q Isn't it a fact that on December 1, 1975, at 7:11 p.m., you called Mr. Rodman at his Spring Valley home to speak to him?

A I don't remember.

Q Do you recall his wife answering the phone?

A I have spoken to his wife on the phone. I don't remember whether it was that day. I don't recall the days that I talked to him.

Q Do you recall Mrs. Rodman telling you that her husband was in Binghamton and giving you the phone number?

A She might have but I don't remember it.

Q You say the first time that Mr. Rodman discussed Franklin Properties with you was on December 3, 1975, is that correct?

A Yes.

Q At that time what did he say to you and what did you say to him?

A He mentioned the name of the stock, Franklin Properties, and if I induced customers to buy it for a dollar I would get, through him or somebody else, 50 cents a share for every share I got customers to buy at a dollar.

Q Did you know that that was an illegal act?

A Yes, I did.

Q Did you tell Mr. Rodman you were not interested?

A No.

Q Did you tell Mr. Rodman that he should not do it, he should not get involved in that type of transaction?

A No.

Q Why not?

A It's none of my business what he does.

Q Didn't you believe that a man whom you intended or hoped to go into business with, have a profitable relationship With, should be warned not to do an illegal act?

MR. LOWE: I object to the form.

THE COURT: Sustained.

Q Would you have put Mr. Rodman in a bad real estate deal?

A No.

Q What did you tell Mr. Rodman on December 3rd, when he told you about the deal?

A I don't remember what I said. Maybe I said I would call him later to discuss it further. I don't remember.

Q Do you recall whether it was the morning or the afternoon or the evening that you had this discussion with Mr. Rodman in which he told you about

Franklin Properties and this payoff of 50 cents a share?

A I believe it was in the late morning.

Q Did you go into any detail with him?

A Yes.

Q Would you please tell me what you said to Mr. Rodman and what Mr. Rodman said to you?

A I remember the substance of the conversation was like I just said: the price of the stock, how much I would get for inducing my customers to buy it. He asked me to check the market price of the stock. I did. And I believe I told him I would talk to him further about it.

Q When he asked you to check the market price of the stock, did he tell you why he wanted you to check the market price of the stock.

A To see if it was a dollar.

Q Did Mr. Rodman know whether it was a dollar?

A He didn't know.

Q Did Mr. Rodman tell you what price the stock was trading at?

A At that time, no. He didn't tell me.

Q Because he didn't know, is that right?

A I assume so.

Q That's why he asked you to check the price?

A Yes.

Q How long in total time did this conversation take place? Do you know?

A Half an hour, maybe. Maybe less.

Q How much less than a half an hour?

A I don't know. Could have been more. I think it took about a half an hour.

Q Who called whom on that call?

A He called me. He told me to go to a different telephone. I called him back and after I checked the market price I called him back again. It was a conversation interrupted twice.

Q But the total conversation, how much time did that take?

A Maybe half an hour.

Q This happened during the day of December 3rd?

A I believe so, yes. It was in the late morning.

Q Thereafter, after you called Mr. Rodman back and told him the price of the stock, did you call him again?

A Yes, I did.

Q When was that?

A It was later that night. I called him a few times but he was not in. Finally, he was in his room, it was around midnight; maybe a little after.

Q At that time what did you say to him and what did he say to you?

A I remember the substance of the conversation. It was we reviewed the conversation we had earlier in the day.

Q Did you intend to do this illegal transaction?

A No.

Q At no time, is that correct?

A At the time I found out it was illegal.

Q The time you found out it was illegal was December 3rd, is that correct?

A Yes.

Q Yet you continued to discuss this transaction with him after you believed it was illegal, is that correct?

A Just discussion, yes.

Q What was the purpose of your discussing this transaction with Mr. Podman after you knew it was

an illegal transaction?

A Maybe there was a legal aspect to it where it could become a legitimate deal.

Q Isn't it a fact you were discussing this transaction with Mr. Rodman in the hope of perhaps getting something on Mr. Rodman?

A No.

Q It never entered your mind?

A No.

Q You were looking for a legal aspect to an illegal deal and that's why you were discussing it?

A Yes.

Q You had no other ulterior motive, such as perhaps giving a case to the United States Attorney's office?

A No.

Q Did there come a time when you discussed with Mr. Rodman what you were to receive on this deal?

A Yes.

Q You discussed that with Mr. Rodman?

A Yes.

Q If you didn't intend to do the deal, why did you discuss with him what you were to receive?

A He initiated that aspect and told me what I would receive.

Q What did you say to him when he told you what you were going to receive?

A I don't recall exactly what I said.

Q Did you say to him, "I don't want it, I don't want any part of the deal?

A No, I didn't.

Q Did Mr. Rodman ask you for anything out of the deal?

A I don't recall whether he said exactly what he wanted out of the deal. I don't know.

Q Did he say to you that he wanted anything out of the deal?

A He implied that he would like something, yes.

Q From whom?

A From me.

Q If Mr. Rodman was to be paying you, why would he be asking you for money?

A I figured he would get it from the other side and probably want something from me also.

Q Did he tell you he was getting anything from the other side?

A I assumed it.

Q You assumed it?

A Yes.

Q You testified before you were to be paid by Mr. Rosenberg and Mr. Rodman, is that correct?

A I believe I did, yes.

Q Now you testify that you were going to pay Mr. Rodman, is that correct?

A I would share what I got with him, yes.

Q Isn't it a fact that Mr. Rodman never promised to pay you anything?

A He said I would get paid.

THE COURT: Are you going to a new subject now?

MR. BERGER: Yes, sir.

THE COURT: Then we will take our mid-morning recess.

MR. BERGER: One more question on that subject?

THE COURT: Certainly.

Q Mr. Noonan, did you tell Mr. Rodman that the other side was trying to give you like a half a dollar less 5 per cent for somebody to do the checks?

A Yes.

Q What did Mr. Rodman say to you when you told him that?

A I don't recall what he said.

Q Didn't Rodman say to you, "That's your business. That's why I said I don't want to know. I don't want to know from it. I really don't"?

Isn't that what he said to you?

A I don't remember if that's what he said or not.

Q Did you say to Mr. Rodman that you were real worried about getting paid from the other side?

A Yes, I did.

Q What did Rodman say to you when you said that?

A "I don't worry about it."

Q Is that what he said?

A I believe so.

Q Nothing else?

A I believe that's what he said. That's all I can recall.

Q Do you recall him saying,when you said you were worried, "I wouldn't, but I mean, again, you know, I don't, I certainly don't want to even be, you know, I don't even want to be concerned, you know, I'd

love to turn around and know something good happened, you didn't even have to do it, ok"?

Do you remember him saying that?

MR. LOVE: Certainly not in that tone of voice. I'm sure the jury remembers what is on the tape.

THE COURT: I'll permit it.

Do you remember him saying that?

THE WITNESS: I remember him saying words like that. I heard it on the tape a while ago.

Q Do you remember him saying, "You know, I'd like to turn around and know something good happened, you didn't have to do it"?

MR. LOVE: Objection.

THE COURT: Asked and answered.

MR. BERGER: I'm ready for another subject, your Honor.

THE COURT: We'll take our midmorning recess.

Before we do this, I have been informed by the circuit executive here that we have some distinguished jurists from Asia who are now listening to argument in the Court of Appeals and they are expected to come and just sit here and sit on on this case at

about 11:30. We will resume at 11:30. It should not make any difference to you about this case, but I indicate to you that there will be some spectators observing what happens in this courtroom.

(The jury left the courtroom.)

THE COURT: All right, gentlemen, 10 minutes.

(Recess.)

(Continued on next page.)

T7 Q Mr. Noonan, when you called Mr. Rodman in November, then it was for the purpose of doing some real estate business and building a business relationship with him, is that correct?

A Yes.

Q Referring to 1973 was there a time when you believed Mr. Rodman owed you some money?

A He did.

Q How much money was that?

A About $900.

Q And was there a time when you attempted to collect that money?

A Yes.

Q Will you please tell the jury how you attempted to collect that money?

A Twice I just asked him for it and he gave me about $50 or $75 on each occasion.

Q Is that the only attempts you made at collection?

A No.

Q What other attempt did you make?

A Pointed a gun at him.

Q Isn't it a fact that you told him that perhaps you knew someone down in a shipping company that could get some money for him on a franchise deal he was interested

in and that he should take a ride with you down to the West Side, near the docks on 23rd Street; is that correct?

A Yes.

I can't hear you with the windows open.

Q Isn't it a fact that Mr. Rodman got into the back of your car and drove down to the docks with you?

A Yes.

Q And then when you got down there what did you do, Mr. Noonan?

A I pointed the gun towards Mr. Rodman and asked him for the money that he owed me.

Q Did Mr. Rodman give you the money?

A No.

Q He told you he didn't have it.

A Yes.

Q He offered you some stock in a restaurant instead.

A Yes.

Q And you said you were not satisfied with that, is that correct?

A I said I didn't want it.

Q You did that to frighten Mr. Rodman, did you?

A Yes.

Q You never got that money back from him, did you?

A No.

Q In fact, you feel that he cheated you in some deal, don't you?

A Yes.

Q You have animosity against Mr. Rodman.

A I feel I have been cheated on one occasion, yes.

Q You feel that Rodman owes you something, is that right?

A Yes.

Q If you couldn't get your money back using a gun, what made you believe you would get a fair shake from Mr. Rodman in the real estate deal?

A I would just watch him very, very closely to make sure I got a fair shake.

Q You don't believe he could have cheated you?

A I would have covered myself so that he couldn't have.

Q Did you think it good business to go in with a man who you believe cheated you?

A If you can make sure that you don't get cheated again, yes.

Q In August, 1975, did you know that you were going to be a witness in a trial brought by the United States Government against William Rodman?

A In August.

Q Of 1975.

A I believe I did, yes.

Q And did you know that the charges in that case were that Mr. Rodman had bribed someone in a company called Value Line, which is a publication that writes stock recommendations, and it was the government's contention that Mr. Rodman paid someone in Value Line to write an article on a stock and recommend the stock called Power Conversion? Did you know that?

A I don't if that was the name of the stock, but the substance of what you said is true, yes.

Q And isn't it a fact that prior to August of 1975 you told Mr. Lowe that in the year 1974, two years after the facts that were alleged by the government in the Value Line case occurred, Mr. Rodman told you that in fact he had bribed Value Line?

A I believe I did, yes.

Q That he had admitted to you that he paid off Value Line, is that correct?

A Yes.

Q And you knew in August of 1975 that during the trial you would be requested by the government to testify as to that confession and admission that Mr. Rodman allegedly

made to you in 1974, is that correct?

A I believe it was August, yes. It could have been later. I don't (pausing).

Q But it was prior to November, 1975, wasn't it?

A Yes.

Q And in November, 1975, you knew that you were going to be called as a witness against Mr. Rodman in that Value Line case, is that correct?

A Yes.

Q And you knew what your testimony would be, didn't you?

A I didn't know I wouldbe in it.

Q You knew you would be asked whether Mr. Rodman told you in 1974 that he had in fact paid off Value Line? Didn't you know that?

A Yes.

Q And you knew that you would testify to that fact, did you not?

A Yes.

Q And you knew as a result of that type of testimony it was possible that Mr. Rodman would have been convicted; is that not true?

MR. LOWE: Objection.

THE COURT: Yes, sustained.

Q You know that that would be very damaging testimony, would it not?

MR. LOWE: Objection.

THE COURT: Sustained.

Q You know that that is exactly what the charges were against Mr. Rodman; is that not true?

MR. LOWE: Objection.

THE COURT: No, I will permit that.

A I believe -- I believe that's true,yes.

Q So knowing how you would testify in November, 1975, you called Mr. Rodman to go into a real estate deal with you,is that correct?

A Yes.

Q Didn't you believe that your testimony, which was to take place approximately a month later, would destroy any possible relationship youcould have had with Mr. Rodman?

A I wasn't sure.

Q During the telephone conversation with Mr. Rodman in November and December had the subject of the Value Line trial against Rodman ever been brought up by either of you?

A I believe we might have mentioned something about it, yes, because I had been called at the first trial and never testified.

Q And Mr. Rodman was gravely concerned about that trial, was he not?

A He seemed concerned, yes.

Q And he knew you were going to be a witness, did he not?

A Yes.

Q Against him, isn't that correct?

A Yes, he knew I was being called by the government.

Q Now in July of 1975 isn't it a fact that you were indicted for a felony in the Supreme Court, Kings County?

A Yes.

Q Isn't it a fact that in October -- approximately October 20, 1975, your attorney, George S.Meissner, made a motion to dismiss that indictment?

A I don't know that the motion ever came before the judge, whether it was denied or accepted.

Q But you know a motion was made, is that correct?

A I don't know that the motion was ever filed. I know he had them made, but from what I understand from my attorney that they don't get presented for refusal or acceptance until just before the trial starts.

Q Did your attorney tell you in October, 1975,

that in fact your motion to dismiss the indictment had been denied?

A I don't know. I don't remember him making a motion. There were appearances and in every appearance there was a delay. Once they approached the bench. I don't know what they discussed.

Q Well, in November, 1975, were you concerned about that felony indictment?

A No.

Q Had you retained counsel?

A Yes.

Q But you weren't concerned about the indictment?

A Not overly concerned, no.

Q What do you mean by "overly concerned"?

A I was concerned that I was under indictment but my lawyer told me that the case did not have sufficient merit, that it would probably be dismissed.

Q But you did not want to go to trial, did you?

A I would if necessary. I didn't feel that I was guilty.

Q But you were not in the least bit worried?

A I was a little worried, yes.

Q Isn't it a fact that around December 4th or 5th when you spoke to Mr. Lowe concerning the transaction,

the conversations you were having with Mr. Rodman, you mentioned this pending -- this indictment in Brooklyn to him, did you not?

A Yes.

Q Why did you mention it to him?

A Well, after we had a discussion about the instant case here, I mentioned to him that I had difficulty in Brooklyn, and that if the District Attorney there called him to verify any statements I made to him, and if he knew them to be true, would he ascertain so, and he said he would.

Q And what would be the purpose of your wanting the District Attorney in Brooklyn to call Mr. Lowe?

A Well, in the original investigation of Mr. Rodman I wasn't evasive, I wasn't uncooperative, I wasn't hard to locate. I could have just, you know, sort of hidden away, but I felt it was my duty to be truthful and not to be evasive, and I thought maybe the District Attorney would see this and think that it wasn't so bad.

Q Didn't you want the District Attorney in Brooklyn to look leniently immediately towards you so that the case might be dismissed without a trial?

A Yes.

Q So that you were trying on December 5th to get

some advantage for yourself by having the District Attorney in Brooklyn call Mr. Lowe and have Mr. Lowe tell him of your cooperation, is that correct?

A I never asked the District Attorney to call Mr. Lowe.

Q Did you tell the facts to your attorney, Mr. Meissner?

A Yes, I did.

Q Why did you tell it to Mr. Meissner?

A He asked me if I was involved in anything, you know, any place else, if I had ever testified any place. He just asked me a brief history of my life, you know, and I told him.

Q Did you tell him that Mr.Lowe agreed to speak to the District Attorney of Brooklyn if the District Attorney called Mr. Lowe?

A I told Mr. Meissner what the story was to Mr. Lowe, and he said he didn't think it was pertinent to the facts in the case in Brooklyn, and he let it go at that.

Q Didn't you want your attorney to tell this to the District Attorney in Brooklyn?

A No, it was up to him. He was defending me. He asked me, I told him, and he said it is not pertinent, and he let it go.

Q And you did not want your attorney to tell the District Attorney in Brooklyn that if he called Mr. Lowe he would be told certain facts?

A I told my attorney -- okay? -- and the attorney said it is not pertinent, you know, and that was it. He never said anything else.

Q Mr. Noonan, what I am asking you is, didn't you want your attorney to call the District Attorney in Brooklyn and tell him that he could call Mr. Lowe? Didn't you want that?

A Until I realized it was impertinent to what the facts of the case over there were.

Q When did you realize it was impertinent to the facts of the case?

A When I told my attorney.

Q But you told your attorney because of the specific fact, it was in your mind, that he call the district attorney in Brooklyn?

A Yes.

Q You testified against Mr. Rodman in December of 1975, is that correct?

A Yes.

Q And you brought the facts upon which this case is based to the attention of Mr. Lowe on December 5th of 1975, is that not correct?

A I believe it was the 4th, yes.

Q Isn't it a fact that in December, 1975 you testified as you did today, that you placed a gun or aimed a gun at Mr. Rodman?

A Yes, I did.

Q Have you been arrested for that?

A No.

Q Isn't it a fact that after you testified against Mr. Rodman and after you brought this case to the attention of Mr. Lowe, the case against you in Brooklyn was dismissed upon the motion of the People of the

State of New York?

A I don't know whose motion it was but the case dismissed.

Q It was dismissed on January 30, 1976, is that right?

A I don't remember the exact date.

Q It was after the trial, the Rodman trial?

A Yes.

Q Do you know a man by the name of Jack Ringer?

A Yes.

Q Did you ever tell Mr. Rodman in 1973 that Ringer owed you money and you were going to go out and point a gun at him to collect it?

A I didn't tell that to Mr. Rodman, no.

Q Referring to the prior proceeding, page 45:

"Q Did you ever tell Mr. Vanasco and Mr. Rodman or Mr. DeFeo that you did that, meaning, did you in fact point a gun at Mr. Ringer and attempt to collect that money?

"A I told them that I was going to but I never did."

Was that answer truthful?

A Yes. I don't believe I told Mr. Rodman. I believe I told Mr. Rodman. I believe I told Mr. DeFeo and Mr. Vanasco.

Q Why did you tell that to them?

THE COURT: Sustained.

Q So your testimony in March is not accurate, is that correct?

A I believe it is.

Q Did you testify:

"I told Mr. Vanasco and Mr. DeFeo but I did not tell Mr. Rodman"?

A I just heard you say "them" but I don't recall telling Mr. Rodman. I am sure I told it to Mr. Vanasco and DeFeo. He might have been there, Rodman, but I don't recall it.

Q You are not sure you did not tell it to Mr. Rodman, is that correct?

A Yes.

Q What would be your purpose in making that statement at all?

A Well, Mr. Ringer owed me money and Vanasco and Tony DeFeo used to poke fun at me that Mr. Ringer beat me for the money and wouldn't pay me. So at one time I said, "I'm going to stick a gun at this guy

and get my money," but I didn't do it

Q You wanted to show him what a tough guy you were?

A No.

Q You wanted to show him you are not afraid to use a gun?

A That was not it at all. They were poking fun at me that Ringer didn't beat them but beat me.

Q At the time you pointed the gun at Mr. Rodman were you on probation?

A Yes.

Q Did you have a license for that run in New York?

A No.

Q Did you know that it was a violation of your probation to carry that gun in New York?

A Yes.

Q Did you ever tell your probation officer in 1973 that you had violated probation and carried a gun and pointed it at Mr. Rodman?

A No, I didn't.

Q In November, 1975 did you have a conversation with Mr. Rodman in which you told him that your wife was sick?

A I might have mentioned it to him, yes.

Q That you needed money because you were finding it difficult to continue school, is that correct?

A No, I didn't.

Q From September, 1974 to October 16, 1975, you were a full-time student, were you not?

A Yes.

Q From October 16, 1975 you went back to work, is that correct?

A Yes.

Q Is there any reason why you decided to go back to work?

A I felt I could work at the time and also to school.

Q You didn't go to work because you needed money?

A No. The need was not there.

Q In November of 1975 did you call Mr. Rodman and tell him that you needed money, that you were going to be a witness against him in the Value-Line case and he better get up the money or put you in some deal where you could make the money or you would bury him at the trial?

A No.

Q Did you ever indicate that to him in any way?

A No.

Q When did you tell Mr. Podman you were back in the securities business?

A I don't remember.

Q Was it in November?

A It could have been. It could have been the end of October. I don't recall.

Q You testified that you were convicted back in 1966 or 1967 of the crime of forgery, is that correct?

A Yes.

Q Do you recall whether under oath in 1975, October, in an application made to Leyner, Dreskin for the National Association of Securities Dealers, you told them you were convicted of issuing an insufficient check?

A Yes, I did.

Q Do you know that an insufficient check is not the same as forgery?

A I assumed it was the same thing. That's why -- when I was originally in the securities business

I asked the SEC in what manner and so forth --

Q Isn't it a fact that on any application made to the NASD, if they had known that you were convicted of forgery you would have been barred?

MR. LOWE: I object to the form.

THE COURT: Sustained.

Q Wasn't it your concern that if you had put down on an application to the NASD that you were convicted of forgery you would have been barred from the business?

MR. LOWE: Objection.

THE COURT: Sustained.

Q Going back to the original deal that you spoke of with Mr. Rodman on December 3rd, how many shares of stock did you tell Mr. Rodman your customers could purchase?

A I don't recall telling him how many at all.

Q You never discussed the amount?

A I don't believe so, no.

Q Mr. Rodman never told you an amount, did he?

A No.

Q On the tape, the recording which you have

between you and Mr. Rosenberg, why did you ask him if Leon Nash was involved?

A Because Mr. Rodman had mentioned Leon Nash previously.

Q Why did you ask Mr. Rosenberg whether Leon Nash was involved?

A Because I wanted to know if he was.

Q Why?

A Because he's a crook.

Q Why did you want to know whether he was involved?

A Because I didn't want to be near anything he was involved with.

Q Mr. Noonan, you were not going to do the deal anyway. Why did you ask whether Leon Nash was involved?

A I didn't want to be even discussing anything with anybody that had anything to do with Leon Nash.

Q On December 5th, when you were at the offices of the United States attorney, you made a recording of a telephone conversation between you and Mr. Rosenberg. I ask you, why did you ask him if Leon Nash was involved?

A To find out if he was.

Q Why?

A Because if he was I would not even discuss the deal further.

Q You mean after you were recording this deal for the United States Government you were still considering to go further into it, is that correct?

A No.

Q With regard to Leyner, Dreskin, you never told Mr. Rosenberg and you never told Mr. Rodman, did you, that Leyner,Dreskin mails every confirmation?

A It's understood. That's the way business is done.

Q Did you ever tell that to Mr. Rosenberg or Mr.Rodman?

A No.

Q Mr. Noonan, in your telephone conversation with Mr. Rodman, December 4th, the one you recorded, you stated

"I'm worried about getting paid from him."

Was that the truth?

A Yes.

Q Mr. Noonan, if you were not going to do the deal, why were you worried about getting paid?

A I just wanted to know if I could get paid

from Mr. Rosenberg. I was not going to do it. I really was not worried about that but I wondered if I would get paid if I had done the deal.

Q You were inquisitive?

A Yes.

Q You were not trying to suck in Mr. Rodman to involve him with you?

A No.

Q Just inquisitive whether, if you had done the deal, you would have been paid?

A Yes.

Q You asked Mr. Rodman this question because you were going to rely on Mr. Rodman's judgment?

A Yes.

Q The man that cheated you, right?

A I would have to make my own evaluation.

Q A man that owed you something, you were going to rely on his judgment?

A I had to have all the facts before me.

Q Why did you ask Mr. Rodman whether you were going to get paid?

A To get his opinion as to whether Mr. Rosenberg would pay.

Q What facts did he give you on December 4th

on which you could base an opinion outside of his opinion?

A None.

Q You were not interested in whether you were going to get paid or not. You were trying to suck Mr. Rodman in for your own purposes, weren't you?

A No.

Q You had no ulterior motive?

A No.

Q You were not concerned about the case in Brooklyn?

A No.

Q You were just worried as to whether you were going to get paid, right?

A Yes.

Q Do you remember saying to him on December 4th in the recorded conversation, you said to Mr. Rodman:

"I mean the bread is nice. And, you know, the light will shine on everybody here. And, uh, that's, you know, that's all I can think about"?

Do you remember saying that?

A If it's in the tape, we listened to it, it's in the tape.

Q You know the sun was not going to shine on everything. Why did you say that?

A It was a passing conversation.

Q You were trying to suck Mr. Rodman in, weren't you?

A No.

Q Just passing conversation, right?

A Yes.

Q Weren't you looking for Mr. Rodman to say to you, "Hey, don't forget, I want my part"?

A He already did.

Q He didn't say it on the tape, did he?

A Yes,he did.

Q He said on the tape he wants his part?

A No. He said he hopes something good happens, which is his way of saying "I hope I get my end."

Q Adn that you didn't have to do it, is that right?

A I don't recall him saying that. It's in the tape if he said it.

Q Isn't it a fact that you were pressing Mr. Rodman for a deal and threatening him?

A No.

Q When you said to Mr. Rosenberg "Rodman always paid me in cash," that was not the truth, was it?

A No.

Q What were you trying to do? Suck Mr. Rosenberg in?

A No. I wanted to show how he was going to operate. That's all.

Q Why did you want to see these things?

A Just interested.

Q In any conversation you had with Mr. Rodman prior to the one on tape, did you try in any way to suck him in?

A What do you mean?

Q Did you try to make him involve himself in any sort of a deal?

A I didn't try to make him do anything.

Q Did you lead him on?

A No.

Q Did you tell him you are not interested in any illegal deals?

A No.

Q You didn't turn him off, did you?

A No.

Q You were trying to put all the pieces together,

right?

A What do you mean?

Q You were trying to get information, right?

A When you ask a question, that's the purpose.

Q Why were you trying to get the information?

A I wanted to find out what the deal was all about.

Q You continued to ask questions after you determined the deal was illegal, right?

A Yes.

Q You had no intention, though, up to December 4th, of speaking to the United States attorney about it, did you?

A No, I didn't.

Q Your indictment in Brooklyn didn't affect what you were doing in any way, did it?

A No.

Q And the fact that you were about to testify against Mr. Rodman was not used by you in any way to push him into a deal, was it?

A No.

Q And the fact that you were about to testify against Mr.Rodman didn't leave you with any concern

that you could not build the business relationship you said you were trying to build, did it?

A No.

MR. BERGER: I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. AIDALA:

Q Listen carefully to my questions, Mr. Noonan, and respond to those questions and not volunteer answers, do you understand that?

A Yes.

Q A few moments ago you volunteered a statement to the jury --

MR. LOWE: Objection.

THE COURT: Sustained.

Any instructions to be given to the witness will be given by the court and not by counsel.

Next question.

Q Moments agoyou testified that you could have hidden yourself where you couldn't be found, isn't that correct?

A Yes.

Q Would you tell the jury approximately -- I'm asking for a figure -- how much money you would

have lost had you hidden yourself for approximately 12 months so that no agency of the government would know your location? Can you give us that approximate figure?

A I don't understand. I would not lose anything.

(Continued on next page.)

T9 Q Mr. Noonan, since you last testified in a court have you spoken to anyone concerning anything whatsoever concerning this case or the two gentlemen here -- Mr. Rodman and Mr. Rosenberg?

A Yes.

Q When was the last time that you spoke to someone about this case?

A Mr. Lowe.

Q When was the last time you spoke to him?

A I spoke to him 15 minutes ago.

Q Did you speak to him before today?

A Yesterday.

Q And where was that?

A In his office.

Q For how long had you spoken to him in his office?

A Yesterday -- no, yesterday I didn't speak to him. I am trying to remember -- yesterday was Tuesday.

A VOICE: Wednesday.

A (Continuing) Yesterday was Wednesday. I spoke to him here in the hallway.

Q Is that the only time you spoke to him?

A Yesterday? Yes.

Q Did you speak to him before yesterday?

A Tuesday.

Q And where was that?

A In his office.

Q And how long did you speak to him in his office on Tuesday?

A Just a few minutes.

Q Was there anyone else present?

A I believe the young lady sitting next to him was there.

Q And again between Tuesday and the last time you testified in court, did you speak to Mr. Lowe or anyone else about the case?

A I believe on Monday I talked to Mr. Lowe.

Q Was that also in his office?

A No, that was on the telephone.

Q Now during your conversations with Mr. Lowe did there come a time when you went over any part of your prior testimony?

A No.

Q Were there any discussions at any time concerning any prior testimony that you gave?

A No.

Q Have you ever discussed with Mr. Lowe or anyone else at any time any part of any prior testimony that you have given?

A In this case?

Q Concerning any case you testified to against either Mr. Rosenberg or Mr. Rodman.

A Yes.

Q When was that?

A I believe it was after I testified against Mr. Rodman in December.

Q By the way, is it not a fact that December the 15th was the day that the case against Mr. Rodman began?

A I don't know.

Q Did you know -- withdrawn.

Is it not a fact that the case against Mr. Rodman began shortly -- and when I say "shortly" I mean within about a week after Mr. Rosenberg had been placed under arrest?

A I don't remember the exact date, no, I don't.

Q I didn't ask you that.

A I don't remember whether it was a week or more. It might be more. I really don't remember.

Q Was it before the Christmas holidays?

A Yes, it was.

Q Have you seen any part of your prior testimony?

A In this case?

Q Yes.

A Yes.

Q And when did you see part of your prior testimony in this case?

A Tuesday.

Q And where did you see that?

A In Mr. Lowe's office.

Q And did he give it to you to read?

A He said, "Here, read this." He gave me a book with a list of my testimony.

Q And you sat down and you read it?

A Yes.

Q And how long did you read it?

A It was a while, I believe -- it was maybe two hours, an hour and a half.

Q And then did he refer to certain parts of that testimony?

A No.

Q He just asked you to read it?

A Yes.

Q Did he tell you the reason to read it?

A No. He said I would have to testify again, that's all.

Q Did you believe as you were reading that testimony that the purpose for your reading it was to make certain

that you gave the exact same testimony again?

A I don't know what the motive was or why I had for reading it.

Q Did you ask or inquire of anyone why you were being given a transcript of your prior testimony before testifying here?

A I didn't ask anyone.

Q Did it ever enter your mind as to why you were being asked to do this thing? In other words, you just did what you were told to do, is that correct?

A He asked me to read it and I read it.

Q Now there is no question, is there, that in the early part of December of 1975 you knew that there was a felony charge against you for illegal possession of a weapon, is that correct?

A Yes.

Q Now you testified earlier that you weren't really concerned about that case because you were not guilty. Is that what you testified to just before?

A I believe my case had merit and I was not guilty what they charged me with.

THE COURT: Mr. Aidala, I haven't been expecting you to cover the same ground that was already covered. I am not going to have a repetition of the same testimony

that was elicited by co-counsel here.

MR. AIDALA: I represent Mr. Rosenberg.

THE COURT: I understand you represent Mr. Rosenberg, but that doesn't make it necessary for you to duplicate what was covered on cross. If you want to expand on it, you are entitled to do that, but I am not going to have a complete repetition of that testimony again.

BY MR. AIDALA:

Q Mr. Noonan, is it not a fact that in the County of Brooklyn you did possess and carry a loaded weapon without a license to do so?

A Yes.

Q And isn't that exactly what you were charged with in the indictment?

A No.

Q What were you charged with?

A I was charged with having a gun at a premises, not my place of business.

Q Illegal possession of a firearm.

A Yes.

Q Did you in the County of Brooklyn possess an illegal firearm?

A Yes.

Q Now in addition to that matter, is it not a

fact that you did, in effect, without any question, have an illegal firearm when you pointed it at Mr. Rodman at the waterfront in New York?

A Yes.

Q Is it not a fact that that happened prior to December of 1975?

A Yes, it did.

Q And is it not a fact that you knew that your act was an attempted robbery and an illegal possession of a firearm?

MR. LOWE: Objection.

THE COURT: Rephrase the question.

Q Were you not aware in early December of 1975 that you had committed felonious acts in New York County by virtue of pointing a gun at Mr. Rodman and by virtue of possessing that gun without a license? Are you not aware of that fact?

MR. LOWE: Objection.

THE COURT: No, I will permit it.

A I did not know it was a felony, at the time.

Q Did you know it was a crime?

A Yes.

Q What types of crime did you think it was?

A I just thought it was against the law. I didn't

differentiate between a felony and a misdemeanor. I didn't know what it was.

Q Then in December of 1975 you were indicted in Brooklyn for illegal possession of a weapon, were you not?

THE COURT: We have been over that, yes.

MR. IADALA: A different point, if your Honor please.

THE COURT: No, we have been over it.

Q Did you know that it was a felony in Brooklyn to possess an illegal firearm?

MR. LOWE: When?

Q In December of 1975 were you aware of the fact that you were charged with a felony because you had an illegal firearm?

A Yes.

Q So is it not a fact that at that same time in December, 1975, you knew you had committed a felonious act by illegally possessing a firearm on the date that you pointed it at Mr. Rodman?

A In December I knew it was felonious, yes.

Q I am talking about the end of November and early December.

A Well, yes.

Q Is it your testimony that in December, 1975,

you were not aware that a motion to dismiss your case had been made in your behalf and had been denied -- is that your sworn testimony?

A My testimony is that my attorney made the motion -- in other words, had it physically typed up and researched or whatever, and from what I understand from him he never presented them to the Court. It was never refused either way or accepted by the Court until after -- until just the day of trial. So far as I know, they were never argued in my presence anyway.

Q Did the prosecutor ever show you the official court records referring to the disposition of those motions to dismiss?

A No, not that I recall, no.

Q Did he ever discuss it with you?

A I never discussed anything with the District Attorney.

Q I am sorry. When I say "the prosecutor," I mean the prosecutor in this case, in this court.

THE COURT: Mr. Lowe.

A Discussed any of the problem in Brooklyn?

Q Yes.

A No.

Q Did Mr. Lowe ever show you a copy of the official

court record which shows the disposition of the motion to dismiss made by your attorney?

A No.

Q Did he ever discuss with you the motion to dismiss?

A No.

Q Since the last two weeks have you spoken to your attorney?

A The last two weeks? No, I don't think so.

Q Do you know whether the prosecutor has spoken to your attorney?

A I don't know whether he has or not.

Q Did you ever ask your attorney "What happened to your motion to dismiss my case?"?

A No, so far as I knew they were just never argued.

Q You knew that it had been submitted, is that correct?

A He had drawn them up but whether he submitted them to the Court or it was argued -- it was never argued in my presence, like now.

Q Is it not a fact that in early December you were aware that the District Attorney was preparing your case to go to trial in Brooklyn?

A I would --

MR. LOWE: Your Honor, I will object to that on the basis of the memoir submitted prior to the beginning of this trial.

THE COURT: No, I will permit this.

(Question read by the reporter.)

A Ultimately the case would, you know, go to trial unless it was otherwise disposed of, but what the District Attorney was doing I wasn't aware of.

Q So in the normal course of events --

(Mr. Lowe stands.)

THE COURT: Yes, sustained.

Q Was there anything that had occurred before December of 1975 that led you to believe that the District Attorney was not going to bring your case to trial?

A Yes. My lawyer said, "You will probably get the case dismissed ultimately, but, you know, everytime you go there is something else, a delay or what."

Q But when he made that reference to you, he meant after the trial, that the jury would find you not guilty?

(Mr. Lowe stands.)

THE COURT: I sustain that. He can't tell you what is in the mind of some other person.

Q What impression did you get when your lawyer made that statement? What did you believe in your mind

that he meant?

A That it would be dismissed, I would never have to go to trial like this, with a jury, and so forth.

Q Is that your sworn testimony?

A What I am saying now.

Q Is that your belief now, that you would not have had to go to trial?

A I don't think I would have to, but if it was necessary I would have.

Q Can you state any reason for any belief on your part that you wouldn't have had to go to trial?

A Well, I believe my attorney told me that he believed it would be dismissed without a trial.

Q And that was based on the motion, is that correct?

A That was based on the first day after the indictment, when we first discussed the case, he seemed to be of that impression, but he --

Q The very first day after you were indicted?

A Well, the first day I was arrested, but again he was ambiguous. He said, "You might have to go to trial or you might not," but I got the impression that I might not have to go.

Q Is it not a fact that before you ever came to contact the prosecutor's office on December 4th you had

first spoken to Rodman?

A On December --

MR. LOWE: About this case?

MR. AIDALA: About this case.

MR. LOWE: I think I missed the question.

MR. AIDALA: I will rephrase it.

Q Before you spoke to Mr. Lowe on December 4th, you had conversations with Mr. Rodman, is that right?

A On December --

THE COURT: No, before that time.

Q Before December 4th.

THE WITNESS: Yes, before December 4th, your Honor, yes.

Q Then you contacted the U.S. Attorney's Office, is that right?

A This case I contacted with Mr. Lowe the first thing in the morning. I spoke to Mr. Rodman on the 3rd, and possibly the 4th, after midnight being the 4th.

Q And then you contacted the U.S. Attorney's Office?

A Yes.

Q But is it not a fact that you came to the U.S. Attorney's Office and said to them, in words or substance, that you had some valuable information?

A I don't recall characterizing it in that manner, no.

Q You did not go down to the U.S. Attorney's Office just to shoot the breeze, did you?

(Mr. Lowe stands.)

THE COURT: Sustained.

Q Did you not tell them, in words or substance, that you thought you had something that they would be interested in?

A I called him up and I told him the facts in the case -- that was it. I didn't characterize it or sensationalize it in any way.

Q In your mind did you feel they would be interested in something you were going to say to them?

A Yes.

Q And then you went down and spoke to them, isn't that correct?

A Yes.

Q And isn't it a fact that after you spoke to them, after you told them your story, then you sought to have some help in getting your Brooklyn case dismissed?

A I didn't seek any help, no.

Q Do you remember testifying on March 16, 1976, and being asked this question -- page 86 -- and giving

this answer -- this is on cross, and it is referring to when you went down to Mr. Lowe:

"Q Had you asked him" -- Mr. Lowe -- "for anything?

"A I had told him that I had had difficulty in Brooklyn and I said if I asked the District Attorney there to call you would you verify certain things I might tell him, and he said, 'If it is the truth,' but that was the end of it.

"Q In other words, did you tell this to Mr. Lowe right after you told him about Mr. Rodman?

"A Yes. But he never called. I never had the D.A. call him.

"Q But it was in your mind, is that correct?

"A Yes."

Did you give those answers to those questions?

A If it is in the transcript, yes.

Q Was it not a fact that when you went down to the U.S. Attorney's Office in your mind with the hope that in some way that they would be able to help you in your case out in Brooklyn?

A It was in my mind, yes.

Q And do you remember being asked these questions and giving these answers on March 16, 1976, at page 90 --

again on cross-examination:

"Q Why did you want him to speak to Mr. Lowe" -- meaning the District Attorney.

"A Maybe this would help his decision.

"Q To dismiss the case without a trial, is that correct?

"A Yes."

Did you give those answers to those questions?

MR. LOWE: On what basis is that offered?

THE COURT: Contradiction.

A Please restate the question.

Q Did you make those answers to those questions?

A I did not hear the question.

Q Do you remember being asked these questions and giving these answers:

"Q Why did you want him" -- the District Attorney -- "to speak to Mr. Lowe?

"A Maybe this would help his" -- the District Attorney's -- "decision.

"Q To dismiss the case without a trial, is that correct?

"A Yes."

A Yes.

Q So there is no doubt, is there, Mr. Noonan,

that when you went to the U.S. Attorney's Office to tell them your story about Mr. Rodman, that it was your hope that it would help you in your Brooklyn matter, isn't that correct?

A It wasn't my motivation, though.

Q Was that in your mind?

A It was in my mind.

Q Did you hope that the United States Attorney's office would be able to help you in your Brooklyn case?

A I really didn't know if they could.

Q Did you hope that they could?

A Yes.

Q As a matter of fact, in any discussion you had with your attorney had he, in words or effect, communicated to you that if in some way you could work with some governmental agency that it would have a beneficial effect on your case in Brooklyn?

A No.

Q Pardon?

A With the exception --

Q Do you remember giving these answers to these questions, again on March 16th -- page 148 --

MR. LOWE: Your Honor --

Q "Q Did your attorney suggest to you in some

way, shape or form that if you worked with the government in some way that it might have a beneficial effect on your case in Brooklyn?

"A Yes, he did."

Did you give that answer to that question, Mr. Noonan?

A Meaning the D.A.'s office in New York.

Q In New York?

A In New York City, County of Kings, Brooklyn.

Q Your attorney then did indicate to you in some way, shape or form that if you worked with some kind of governmental agency it would have a beneficial effect or might have a beneficial effect, isn't that correct?

A I mean ths D.A.'s office.

Q Is that correct, Mr. Noonan?

A Is what correct?

Q That your attorney told you that if you worked with some governmental agency that it might have a beneficial effect on your Brooklyn matter -- yes or no?

MR. LOWE: Your Honor, objection.

THE COURT: All right, I am going to sustain it. We have been through this enough. I am limiting the cross-examination. We have covered this adequately, and I am limiting the cross-examination in this field.

Q Do you recall testifying that --

MR. LOWE: Your Honor, I think he should ask some questions -- not about whether he testified about something in the past.

THE COURT: Yes, sustained.

Q Before December, 1935, had anyone given you the impression that the District Attorney was planning to dismiss your case in Brooklyn?

A Whether the District Attorney was planning to, my lawyer gave me the impression that he could get it dismissed, but whether, you know -- I don't know what the D.A. was planning to do. He told me that on the merits of the case he thought he could get it dismissed.

Q Do you mean that he thought he could win the case -- is that what you mean?

A No, get it dismissed, you know -- if it is winning on my part, yes.

Q Do you mean getting it dismissed after a trial?

A Getting it dismissed before, after or during trial. In other words, I would be found not guilty, or dismissal -- anything other than a conviction is what I mean.

Q Did you ever tell anyone or did anyone ever tell you before December, 1975, that the District Attorney was

planning to dismiss your case?

A Not that I recall, no.

Q All right. Do you remember testifying -- again on March 16, 1976, page 90:

"Q Did you want Mr. Lowe" -- and then you interrupted and gave this answer: "The District Attorney was planning to dismiss the case."

Did you testify last week, to that answer, to that question?

A The D.A. was planning to dismiss the case, yes. You asked me if somebody told me that in November. I don't think we got to that discussion with the D.A. until the latter part of December.

Q So this was after you had come to the U.S. Attorney's office, after you told them the Rodman story, is that right?

A Yes.

Q And is it not a fact, Mr. Noonan, that the last time you testified you attempted to conceal the fact that someone -- some governmental agency had intervened in your behalf in getting the case dismissed in Brooklyn?

A How do you mean come to conceal? I don't know what you mean.

Q Did you try to conceal that fact from the jury?

A That a governmental agency helped me in Brooklyn?

Q Yes. Did you try to conceal that when you testified on the 16th of March, 1976?

A Yes.

Q So when you testified before a jury you tried to hide that fact from them, didn't you?

A I hid it from everybody.

Q Right, and you were under oath and you were sworn just as you are today, isn't that correct?

A I didn't lie.

Q Is it not a fact that after you testified on the 16th that I and you were present in the Supreme Court in Brooklyn before the very same judge who had dismissed your case? Isn't that a fact?

A Yes.

Q And is it not a fact that at that time we discovered that the minutes had been sealed in your case, isn't that correct?

A Yes, it is.

Q And is it not a fact that as a result of my going to Brooklyn it was discovered that some governmental agency had in effect intervened on your behalf and the case was dismissed?

A I don't know how you found it out.

Q Is it not a fact that after we appeared in Brooklyn Supreme Court that that fact was brought out?

A Excuse me.

Q Is it not a fact that it was only after I had gone to the Supreme Court, you had been there and the Judge who had dismissed your case was there, that the fact that was discovered that the governmental agency had intervened in your behalf to get the case dismissed?

A Yes.

Q The very fact that you attempted to conceal from the jury.

A I didn't attempt to conceal anything.

Q You did in fact conceal?

A I didn't lie or try to hide anything. I just didn't want anybody to know -- you, the U.S. Attorney or anybody.

Q As a matter of fact, you had even concealed that fact from the prosecutor in this case, Mr. Lowe, isn't that right?

A I didn't conceal. I refused to discuss it with him.

Q Well, had you told him at least that some governmental agency had intervened in your behalf?

A He asked me the circumstances of why the case

was dismissed, and I told him I wouldn't tell him, and he asked me to release the minutes to him and I told him I wouldn't.

Q So you hid the fact even from --

THE COURT: All right, please let us get to something else now.

Q By the way, would you consider yourself as being a professional witness?

Do you know what I mean by that term?

A No, I don't.

Q Will you tell the jury again -- I am asking for a figure -- approximately how many times you have ever testified, either in a court such as you are in today, or the grand jury -- just approximately how many times?

A Seven or eight times.

Q And you haven't been in any prison all these years, have you?

A No.

Q By the way, you said in 1973 you were still on probation is that correct?

A Yes.

Q And that was as a result of a crime you committed in 1966 or '67?

A Yes.

Q Would you say it was a misdemeanor?

A Yes, I would.

Q Can you explain why you were on probation for such a long period of time?

THE COURT: I will sustain that.

Q Had you ever been taken off probation and then subsequently violated that probation?

A My probation was over -- it was over -- that was it.

Q Well, when was it over?

A I was released from probation, I believe, in 1974.

Q And when had you first been put on probation?

A In '67, I believe it was -- '68 -- '67. It was a long time ago.

Q Approximately seven years you were on probation; is that your testimony?

A Yes.

Q By the way, how many times did Mr. Rosenberg ever call you on the phone?

A I don't believe he ever did.

Q You don't believe or you know for a fact that he never did?

A I don't believe he ever did.

Q Well, is there any occasion when you for some

reason think that he might have called you?

A Maybe he did. I don't want to be called a liar. I don't think he did, but I don't recall it.

Q Is there even the slightest possibility that Mr. Rosenberg ever called you, Mr. Noonan?

MR. LOWE: Objection.

THE COURT: Yes, objection sustained.

Q Did Mr. Rosenberg ever have your phone number?

A I don't know what he has.

Q When did you first call Mr. Rosenberg, do you remember the date?

A I believe it was December 3rd.

Q And had you tried to call him before that time?

A I don't think so, no.

Q Wasn't there some conversation, in your taped conversation with Mr. Rodman,where you had been indicating you were trying to get this guy and you can't get him?

A Yes.

Q When you said that to Mr. Rodman had you in fact been trying to get Mr. Rosenberg?

A Yes.

Q So when a moment ago yousaid that --

A Why?

Q What?

A You said on the 3rd. I told Mr. Rodman on the 4th I hadn't been able to reach the guy satisfactorily, that I tried to reach him on the 3rd -- well, before the 3rd I never tried to reach him.

Q How many times after the 3rd did you try to reach Mr. Rosenberg?

A Once, I believe.

Q Are you sure of that?

A No, I am not.

Q When was the one time you tried to reach him after the 3rd?

A I believe it was on the morning of the 4th.

Q And where did you try to call him on the morning of the 4th?

A At his office.

Q Was he in his office?

A Yes, he was.

Q Did you speak to him?

A Yes -- I believe it was the 4th, yes.

Q Was that two times that you had spoken to him?

A Let's see. I spoke to him once -- I believe it was -- I spoke to him one morning and I tried to reach him later on that day and then I recorded a call within the next day. It could have been the 3rd or 4th, or the 4th or the 5th.

MR. AIDALA: I think the government will concede that December 5th is the date of the conversation recorded with Mr. Rosenberg, is that correct?

MR. LOWE: The government stipulates that the telephone recorded phone conversation with Mr. Rosenberg took place on December the 5th, 1975, at approximately noon.

Q Which was a Friday?

MR. LOWE: That is correct.

A Yes.

Q Now using that as a reference point, when was the first time you spoke to Mr. Rosenberg?

A December 4th.

Q And approximately at what time on December 4th?

A I believe I reached him before noon, and I tried on two other occasions that day to call him and I couldn't reach him.

Q When did you again try to reach Mr. Rosenberg?

A December 5th, the next day.

Q On December 4th you said you spoke to him once. When did you try to reach him again?

A In the afternoon.

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Q In the afternoon. Where did you call?

A At his office.

Q Did you indicate a certain surprise that he was not waiting for your call?

A It was during business hours. I wondered why he was not there.

Q Weren't you wondering why he was not waiting for your call?

A No.

Q Did you speak to someone in his office?

A Yes.

Q You said it was business hours. Isn't it a fact that you called him about 4:30 or 5 p.m.?

A I don't remember the time but that's within the business day, yes.

Q What time does the stock market close?

A When it opens and closes -- you have to be there before and you have to be there after. For the business day, it's substantially after the market closes.

Q Do you know the name of the gentleman you reached at John Maher when you tried to get Mr. Rosenberg?

A No, I don't.

Q Is it not a fact that you told that gentleman that it was very important that you locate Mr. Rosenberg?

A I said I would like to locate him. I don't know whether I said it was very important.

Q Did you attempt to create the impression that it was important?

A No.

Q Had you not been told that Mr. Rosenberg had left for the day?

A Yes.

Q You asked for his home phone number, isn't that correct?

A I asked where he could be reached.

Q Did you ask for his home number?

A I asked where he could be reached and he said he would be home, so I asked for the number, yes.

Q They didn't give you the number?

A They told me where I could find it.

Q They didn't give you the number, did they?

A No.

Q Then you asked where he lived, is that right?

A No. I think they volunteered it.

Q In any event, you made special efforts to track down and find out Mr. Rosenberg's phone number, isn't that correct?

A Yes.

Q You were anxious to contact him that day, were you not?

A Yes.

Q And you in fact finally got his home phone number, did you not?

A Yes.

Q He was not at home waiting for your call, was he?

A No.

Q You didn't speak to him that night either, did you?

A No.

Q Then you called again the next morning, isn't that right?

A Yes.

Q Did you get him the next morning when you called?

A Yes.

Q Did you call him twice on the 5th?

A I don't recall. I remember I called him and

got in touch with him?

Q Eventually you got in touch with him, is that right?

A I got in touch with him on the morning of the 5th, yes.

Q Did you call him once before on the 5th before you finally got in touch with him?

A I don't recall. I might have.

Q You were the one who always sought out Mr. Rosenberg, isn't that correct?

A What do you mean by that?

Q You were the one who always tried to contact him, not the other way around, isn't that correct?

A I did call him, yes.

Q Is it not a fact that there was approximately a week to go from December 5th until you were to testify in the case against Mr. Rodman?

MR. LOWE: We have been over this before, your Honor.

THE COURT: Sustained.

Q By the way, when you were in the office of the United States attorney on December 4th, and you were telling him your story, he was writing down a substantially verbatim account of what you were telling him,

is that right?

A He was taking notes.

MR. AIDALA: May we have Government's Exhibit 3501C, please?

MR. LOWE: You have it. Where is it?

MR. AIDALA: I have no objection to using my copy.

Q Look at this document (handing).

You have seen that before?

A Yes.

Q You know what that is, is that right?

A Yes.

Q That's the affidavit upon which Mr. Rosenberg was placed under arrest, is that correct?

A I don't know. I made this affidavit, yes.

Q Is it not a fact that those are the notes, the substantially verbatim account, that Mr. Lowe was writing on December 4th, based on what you were telling him?

A Most of it was done on the 4th, yes.

Q By the way, since you last testified last week, have you had a conversation with anyone concerning that document?

A No.

Q You are sure of that?

A Yes.

Q Is it not a fact that that affidavit, that document before you, is what Mr. Lowe wrote on December 4th of 1975, when you were talking to him?

A He wrote some on the 4th and some on the 5th.

Q Did you ever testify to that effect last week when you were questioned?

A I was confused as to the dates, yes. I don't remember how I testified.

Q I ask you if you remember being asked this question and giving this answer on --

MR. LOWE: Your Honor --

THE COURT: Sustained.

Q Is it not a fact that you were not confused but that you were deliberately trying to conceal something from the jury?

A No.

MR. LOWE: I object, your Honor.

THE COURT: Sustained.

MR. AIDALA: For the record, I would like to read from page 137 of the minutes, line 11,

through 138, line 18. May I be permitted to do so?

MR. LOWE: I object, your Honor.

THE COURT: I don't have the minutes in front of me.

MR. LOWE: My copy was loaned to the court reporters.

THE COURT: Put a question to the witness and then we can see whether there is anything to be read or not. That's the proper way to do it.

Q Is that affidavit a fair and accurate representation of everything you told Mr. Lowe on December 4th?

A Yes. And some --

Q Are you saying that Mr. Lowe wrote something down on the 5th?

A I believe he did.

Q What is it that he wrote on the 5th?

A I don't know but I know it was written some on the 4th and some on the 5th. I believe I signed it on the 5th after it was typed up.

Q Do you know the type of paper he was writing on on the 5th?

A I don't.

Q Was it a yellow pad?

A I don't know.

Q Was it that document in front of you?

A This is typed.

Q So it was something other than that document, is correct?

A Yes.

Q When for the first time did you become unconfused about the answers you gave last week about this document?

A The day after I testified at the last trial.

Q So, in other words, you testified about this matter on the 17th?

A Yes.

Q Did you tell the prosecutor about that?

A I didn't mention it to anybody.

Q Did you attempt to correct your confusion when you resumed the stand and testified again?

A I sat and I thought about it, yes.

Q Did you attempt to correct it to the jury when you resumed the stand?

A Today?

Q After the 17th.

A I believe it was reconciled at that point in the testimony. You gave me the thing. The affi-

davit was given to me and we discussed the dates and everything and how I was led to believe it was a different day and subsequently we straightened it out.

MR. AIDALA: I'm going to read these questions and ask you if you gave these answers --

THE COURT: Is there an objection?

MR. LOWE: Yes, your Honor.

THE COURT: Sustained.

Q Mr. Noonan, when did you start working with Leyner, Dreskin?

THE COURT: Are you going to a new topic?

MR. AIDALA: Yes, your Honor.

THE COURT: We will suspend for lunch.

We should resume here at 2 o'clock.

I know I don't have to remind you, but I will. Don't discuss the case. Don't let anyone discuss it with you.

Have a pl;asant luncheon and I'll see you here at 2 o'clock.

(Luncheon recess.)

AFTERNOON SESSION

2.00 P.M.

J. K E N N E T H N O O N A N, resumed.

MR. AIDALA: May I proceed, your Honor?

THE COURT: Yes.

CROSS EXAMINATION

CONTINUED BY MR. AIDALA:

Q Mr. Noonan, after his Honor and the jurors left this court this morning, you remained here and had a conversation with Mr. Lowe, isn't that correct?

A Yes.

Q That was about 10 or 15 minutes, isn't that right?

A I don't know how long it was.

Q Approximately.

A Yes.

Q And during the course of that conversation parts of it had to do about the case or your testimony.

A Yes.

Q And as a matter of fact at some point Mr. Lowe said to you, "Okay" -- do you remember that, after he told you something?

A I don't recall his exact words, but -- (pausing).

Q Will you tell the jurors what the conversation was between you and the prosecutor during the recess while

you were still on cross-examination?

A He asked me why I asked certain questions of Mr. Rosenberg and Mr. Rodman on the telephone conversation that was taped. He said, why I did this. I said, you know, to the best of my knowledge, I wanted to know more about the deal, and that is the reason I asked it; but there was more to it than that. I wanted to know about the deal. The reason I wanted to know is it would verify my story --

Q Mr. Noonan, what did the prosecutor say to you during the recess when you were still on cross-examination in this court?

MR. LOWE: Your Honor, I want that conversation both ways -- that is what he was giving.

THE COURT: We will get the entire conversation.

A He asked me -- he said, "Why did you," you know, "ask these things?" --

Q No, no. He asked you why I asked or did he ask you why you gave him the answer that you gave?

A No. He asked the same question that you did. He said, "Why did you say," you know -- "Why did you ask the various statements" that I did of Mr. Rosenberg and Mr. Rodman. I said, "Well, I wanted to know -- in fact, I wanted to know about the deal."

He said, "Why did you ask it? Why was it asked,"

you know.

He said -- well, you know -- it just reinforced my story -- that's what I said. He just kept asking me, you know.

Q What else did you talk about during that period of time concerning this case while you were still on cross-examination?

A That's all.

Q Are you saying approximately 10 to 15 minutes --

MR. LOWE: Your Honor, I object to this approximately 10-to-15-minute period.

THE COURT: Yes.

Q Will you tell us to the best of your knowledge, Mr. Noonan, approximately how long the prosecutor was speaking to you about your testimony during the recess, while you were still under cross-examination?

A Very briefly -- maybe three minutes, four minutes.

Q Do you recall --

THE COURT: The jury will disregard completely any facial expressions, any whistling or any other kind of indications of anything, and I direct all participants in this trial not to make any facial expressions, not to whistle or do anything else. The jury will completely disregard it.

If there any testimony to be taken, it will be taken from this witness stand under oath.

All right, next question, please.

Q Do you recall what Mr. Lowe said to you just before he said "Okay"?

A I don't recall him saying "Okay." That was your -- your inference. I don't remember him saying "Okay."

Q Is it your testimony that you simply don't remember or that he may have said it or that he didn't say it?

A He may have said it. I didn't hear him say it. I don't remember him saying the word "okay." He might very well have.

Q On December 4, 1975 I believe you testified that at approximately 4:35 p.m. you called Mr. Rosenberg's office and spoke to somebody there?

A Yes.

Q Isn't it a fact that you were told he had been out of the office that entire afternoon?

MR. LOWE: Objection. Hearsay.

THE COURT: I'll permit it.

A I really don't remember what they said. They said he was not there at that time. What else was said, I don't remember.

Q Did you in fact state that you thought he would wait around?

A I don't recall if I did, no. I remember I called. He was not there.

Q By the way, that phone conversation was taped, was it not?

A I believe it was.

Q When was the last time you listened to that taped conversation?

A I don't remember. It was a long time ago.

Q How long ago?

A Months.

Q In the evening of December 4th you called Mr. Rosenberg's home and he was not there, is that correct?

A Yes.

Q Is it not a fact that in the morning of December 5th of 1975 you called his office and you were told he was out?

A December 5th?

Q Friday, December 5, 1975.

A I talked to him that morning in his office.

Q Before you spoke to him that morning did you not try to contact him earlier that day?

A Yes, yes. A few minutes before. You are right.

Q You were told he was out, is that correct?

A Yes.

Q As a matter of fact, you were told there were no messages for you when you inquired?

A I don't know if I inquired that.

Q Were you told in fact or in substance there were no meetings for you?

A I asked if Mr. Rosenberg or Bill was there and they said no.

Q Whether you inquired or whether the individual volunteered it, were you not told there were no meetings for you?

MR. LOWE: Objection, your Honor.

THE COURT: I'll permit it.

A I don't remember.

Q When did you start working at Leyner, Dreskin?

A End of October, 1975.

Q Briefly, how did you get that job?

A I knew the partners there for many years.

Q Would a felony conviction affect your license to operate?

A Not unless it involved a violation of the securities law.

Q When did you find that out?

A 1971.

Q Was there some reason for you to inquire about that at that time?

A Because of the difficulty I had when I was

19, when I first went into the securities business, I went to the NASD and SEC on my own and discussed it with attorneys from both agencies, and they told me as long as I was not convicted of anything to do with the securities law they would have no reason to object for anybody to be in the business.

Q Even if it was a felony?

A Yes.

Q There has been prior testimony concerning your felony charge in Brooklyn and a possible felony charge here in New York as a result of what you did to Mr. Rodman.

MR. LOWE: There has been no such testimony.

THE COURT: Not in this case. It's preliminary to the question.

Q Isn't it a fact that when I asked about acts of extortion you committed you refused to answer on the ground your answer might tend to incriminate you?

A I was wrong in answering that way.

Q You gave that answer last week to that question --

THE COURT: This is improper. Please. Put a proper question. Whether there is an objection or not, put a question.

Q I'm asking you about your state of mind. When you refused to answer whether you extorted people on the ground it would tend to incriminate, did you at that time in your mind believe your answer would tend to incriminate you.

MR. LOWE: I object to that.

THE COURT: Sustained.

Q In early December of 1975 did you believe that due to certain acts of extortion you committed against people you would be subject to criminal prosecution?

MR. LOWE: Objection.

THE COURT: Sustained.

Q In December of 1975, in your mind, did you have a belief that acts that you had committed other than the case in Brooklyn and other than the acts against Mr. Rodman -- did you believe there were other acts you had committed that would subject you to criminal charges?

A No.

Q When you took the Fifth Amendment did you believe that you had committed certain acts that would subject you to criminal prosecution?

A I just didn't know and I wanted to be safe

in that answer. I didn't know.

Q In other words --

A Why answer if I am not cognizant of the legal meaning of the words?

Q So in your mind you were uncertain as to whether what you had done would subject you to criminal charges, is that right?

A I thought I should keep my mouth shut on something I didn't know about. I never extorted money fromianybody.

Q Would you tell us what acts you did which led you to say you would not testify concerning those acts because you believed they would tend to incriminate you?

MR. LOWE: Objection.

THE COURT: Sustained.

I will not restrict you from going into a question of a possible motive with respect to this, but the question as put that way is objectionable and the objection is sustained. I am not limiting your inquiry into his state of mind and so forth in connectionwith any possibility of expectation in the area in which I believe is permissible and which I know you know is permissible.

BY MR. AIDALA:

Q Is it not a fact that if you had a felony conviction, that it would be discretionary with the NASD as to whether to permit you to be registered?

A I was under the impression it was not discretionary but that's what the law said because I asked them that.

Q That they would have to register you?

A I was under that impression because when I asked them, I remember specifically he said there was even a case here where a guy was convicted of kidnapping and he was allowed to be a principal.

Q Earlier this morning the prosecutor asked you if a representative of the United States Government was involved in your dismissal of the case in January of '76 and you answered yes, and he asked you did you involvement with that United States governmental agency have anything to do with this case and you answered no. Do you recall answering?

A Yes.

Q What did your involvement with that agency have to do with it?

MR. LOWE: Objection.

THE COURT: I'll permit it.

THE COURT: I'll permit it.

A I'm not going to answer it.

Q Are you asserting your Fifth Amendment right on the ground it might tend to incriminate you?

A No. I will not answer it.

MR. AIDALA: I request the court to direct the witness to answer the question. The prosecutor opened the door when he asked that question of that witness.

THE COURT: All right, the jury will file out, please.

(The jury left the courtroom.)

THE COURT: Mr. Lowe.

MR. LOWE: Your Honor, I pointed out solely that it had nothing to do with this case. At the first trial we had an agreement from defense counsel that they would not go into these details. They know these details have nothing to do with this case, and the only reason they could possibly want to go into them is not even to discredit Mr. Noonan but to find out, and I submit, your Honor, that finding out would be improper under the circumstances.

If they want to ask Mr. Noonan was he an informant for another government agency and the same

type of things we had out the last time, Mr. Noonan will answer the questions.

Mr. Noonan has what I believe to be a perfectly legitimate reason for refusing to disclose an answer to the question put which would require, in a candid answer, detailed information which would subject him to a great deal of difficulty as I previously pointed out to the court. We have to limit this area both in fairness to the witness and basically, your Honor, in fairness to the integrity and confidentiality of certain information that's in the possession of the government that should not be disclosed to the public at large and certainly not to anyone--

THE COURT: Is it of such a nature it might place the life of this witness in jeopardy?

MR. LOWE: It is my belief, based on what I have been told by the agency involved, that it very well could.

THE COURT: Will you accept the representation of the United States attorney or do you want me to take that information in camera?

MR. AIDALA: May I be heard?

THE COURT: Will you accept that representation or is it necessary for me to get that informa-

tion in camera.

MR. AIDALA: I am under the belief that even Mr. Lowe is unaware. I don't know how he can make that representation. As of last week, at least, he was not aware and that's what he represented to this court, so unless he suddenly has become aware of knowledge which he did not have last week, I don't know how he can make that representation.

THE COURT: He's making the representation as a representative of the United States government.

MR. LOWE: I'll make a further representation. What I was not aware of was what went on in Brooklyn. I have always been aware of the contents of a file in the possession of a government agency. I have been aware of that for some time. Prior to the start of the first trial I made application that certain matters not be disclosed to anyone. I did not even disclose in that application to the court what the details were.

It seems to me there is not one single legitimate reason to inquire into those details. They do not involve criminal activity on the part of Mr. Noonan or anything even remotely like that.

The fact of the matter is that Mr. Noonan's

status in general I have no objection to that being brought out. I have no objection to any of that. What I object to is an attempt to find out confidential information which could, in the opinion of the agency involved, subject Mr. Noonan to certain difficulties which could result in severe consequences to him.

MR. AIDALA: There is a solution, Judge, if what Mr. Lowe is saying is accurate. The fact of the matter is that since he opened the door and elicited the answer he did, the defendants cannot be asked to accept Mr. Noonan's as being the truth.

THE COURT: You can as we did in the last case.

Are you acting as an informant on behalf of a government agency?

That's sufficient if that's all you are trying to do here.

MR. AIDALA: The prosecutor opened the door by asking him and eliciting an answer, which was a negative one, that his involvement with that agency had nothing to do with this case. I will not accept that as being the truth. There is a solution.

MR. LOWE: Mr. Aidala, are you accusing

me of lying?

MR. AIDALA: You must have misunderstood me.

MR. LOWE: I have told you I know all about it. If you don't accept that, you have to be accusing me of not telling the truth.

MR. AIDALA: I will not respond.

The fact of the matter is that there is a solution. If the government feels there is a danger to this witness, it involves a balance as we have throughout our society and throughout our justice system, the balance being if that is so, then Mr. Noonan's testimony should be stricken and the case should proceed without his testimony.

THE COURT: That's not the requirement. The requirement is not that.

MR. AIDALA: I would so move if he's permitted to continue and if I am not allowed --

THE COURT: Do you request I take the information Mr. Lowe has in camera and then make my determination? In other words, or are you satisfied with Mr. Lowe's representation to the court?

MR. AIDALA: I will only respond by saying I'm asking the court to direct the witness to answer

the question.

THE COURT: I'm asking you to answer my question and not to ask questions of the court.

MR. AIDALA: Is your Honor directing me --

THE COURT: Are you saying you will not accept the representation of Mr. Lowe?

MR. AIDALA: If I must answer that under your Honor's direction, I will.

THE COURT: You must answer it. I am directing you.

MR. AIDALA: Then I will not accept the representation of Mr. Lowe.

THE COURT: Then I will take the information in camera.

In the meantime we will proceed with the cross examination of this witness and lay off that subject except if you want to do it by asking if he is acting in some other capacity with the government.

MR. AIDALA: May my objection be noted.

THE COURT: Mr. Lowe, some time early tomorrow morning I will expect you to give me the information with respect to that in camera. You may give it to me in affidavit form and it will be

sealed.

MR. LOWE: Unless I run into difficulty I'll give your Honor the same file I had access to.

THE COURT: I don't want it now.

MR. LOWE: It takes time, your Honor. It's a real hassle.

THE COURT: Bring the jury in.

Is your position the same as Mr. Adalia's?

MR. BERGER: I don't think I should have to be put --

THE COURT: I'm asking you.

MR. BERGER: I will have to stand with co-counsel.

(Jury present.)

T3

BY MR. AIDALA:

Q Mr. Noonan, was it your sole -- your only intent to work for Leyner,Dreskin in order to make money in the ordinary course of business of Leyner,Dreskin, or were you using it as a front of some sort for some other activity?

A No, I just wanted to make money in that course of business.

Q And will you tell us approximately how many customers you had during the time you were at Leyner, Dreskin?

A How many people I talked to or how many, you know, people I actually --

Q How many orders did you handle before you left Leyner, Dreskin?

A About 20.

Q And approximately how much money did you make while with Leyner, Dreskin?

A Just a few hundred dollars for the month.

Q Is it a mere coincidence that you left Leyner, Dreskin when Mr. Rosenberg was arrested?

A Yes.

Q No other reason?

A No -- well, the reason I left is because I couldn't devote the time necessary to that and school,

because my wife was ill.

Q When you checked the price of Franklin Properties how much was it selling for?

A I believe it was offered at 5/8 of a dollar.

Q And how much is that?

A 62-1/2 cents.

Q And, by the way, was the alleged arrangement you would have, you were to receive 50 cents from any sale that took place, is that correct?

A Yes.

Q Did you consider that to be a very generous offer to you?

A I really didn't know -- I was never engaged in this before.

Q Well, did you think that it was a very generous offer that you should get 50 cents -- you?

A I really can't offer an opinion. I don't have any frame of reference.

Q Did you give it any thought at that time?

A No.

Q Now isn't it a fact, Mr. Noonan, that the number of shares which were issued and outstanding in the hands of the public is relevant to the ability to manipulate any stock?

A I think it is more relevant to the amount of capital available to whoever wants to buy the stock.

Q Well, is your answer "Yes" or"No" to my specific question?

A No.

Q Do you remember testifying on March 16, 1976, page 110 of the record -- do you remember me asking you this question and you giving this answer:

"Q Would the number of shares issued and outstanding and in the hands of the public in your opinion as a broker, you being in the business for many years, be relevant to the ability to manipulate the price of a stock?

"A Yes."

A That isn't what you just asked me.

Q Did I not just ask you the question whether the number of shares issued and outstanding in the hands of the public is relevant to the ability to manipulate the price for the stock?

A You said --

MR. LOWE: I think he left out, among other things, "in the hands of the public" in his initial question.

THE COURT: That is right.

Q Well, what is your answer now?

A What is the question?

THE COURT: What is the question?

Q Is the number of shares issued and outstanding and in the hands of the public in your opinion as a broker relevant as to the ability to manipulate the price of a stock?

A Yes, it is.

Q And if there were millions of shares outstanding it would be extremely relevant for any stock to be manipulated?

A There are other factors. That couldn't be answered "Yes" or"No."

Q Well, would one factor be if there were millions of shares outstanding would that be extremely relevant?

MR. LOWE: That is hypothetical; it has no basis at thispoint.

THE COURT: I will permit it.

A Will you repeat the question?

Q If there were millions of shares outstanding, would that be a factor which would be extremely relevant to the ability to manipulate the price of a stock?

MR. LOWE: Your Honor, the question has changed in what I think is a meaningful way. "Outstanding" and "in the hands of the public" don't mean the same thing.

The question started out "in the hands of the public."

THE COURT: All right, let us get one question at a time. You have several there.

Q Let me try to make it simple.

Does your common sense and experience as a broker indicate to you that the more stocks there are the more difficult it is to manipulate those stocks?

A I cannot answer it "Yes" or "No." If it was a high-priced stock, yes, it would. If it was for pennies or quarters a share, it would not be that relevant.

Q By the way, did you check to find out how many shares of Franklin Properties had been issued?

A No.

Q Now when you finally reached Mr. Rosenberg on your second attempt, on December the 5th, there is no question, is there, that you lied when you spoke to him, is that right?

MR. LOWE: I will object to that.

THE COURT: Yes, sustained.

Q Well, I am talking about the taped conversation, isn't that correct? Do you understand what I am talking about?

A The tape of --

THE COURT: Well, what is the question?

Q Is it not a fact that in certain statements you made to Mr. Rosenberg you deliberately lied to him?

MR. LOWE: Objection.

THE COURT: Yes, sustained.

Did you make deliberate misstatements in the conversation that you had?

THE WITNESS: Yes, your Honor.

Q And is it not a fact that you did your best to convince Mr. Rosenberg of your story?

A I had no story.

Q Well, when you told him, for example, about there being a person who wanted to purchase 30,000 shares, was that a story?

A Yes.

Q So you did have a story, didn't you?

A Okay, yes.

Q And you did your best, did you not, to convince him of your story, is that not correct?

A I don't know if it was my best or not.

Q Well, did you try your best to convince him?

A I mean, you know -- it is your characterization of -- Itried to bring out the story from him. Whether it was my best story, you characterized it that way -- I don't know.

Q Did you intend, in whatever way you could, to convince him of the truth and accuracy of what you were saying to him?

A Yes.

Q And you spoke in a certain tone of voice, isn't that correct?

A I just spoke to him.

Q And you were leading him on, were you not?

A I was just discussing it with him -- what he said, he just said.

Q I am asking you about what you said. When you told him the story, the false story about selling -- about wanting to buy 30,000 shares, weren't you leading him on?

A Yes, to some extent, yes.

Q Well, to what extent were you not leading him on?

A I was leading him on.

Q And you were leading him all the way on -- not to any extent -- isn't that right?

A I don't know.

Q Well,those were your words, weren't they?

A With reference to that part of the conversation where I said I had somebody to buy 30,000 shares, yes, I

was leading him on.

Q And you hoped that he would believe you, didn't you?

A Yes.

Q You did not know, though, whether he was trying to lead you on in any way, did you?

A He wasn't trying to lead me on.

Q Well, you don't know that, too.

A How could I know what's in his mind?

Q That is right, and he spoke to you in a tone that was convincing didn't he?

A Well, never having spoken to him except those two occasions, I really don't know how his tone or manner would change.

Q By the way, did you find that Mr. Rosenberg was a very agreeable man of sorts? I'll give you an example.

Do you remember you said to him that you were only going to do a few thousand -- isn't that correct?

A I believe that is in the tape, yes.

Q And then you made your story or told him the story that there was someone who was willing to buy 30,000 shares; correct?

A Yes.

Q And he said, "That's okay," or words to that

effect, isn't that right?

A It's in the tape, yes.

Q By the way, when he said to you in a certain tone, "I have accumulated 150,000 shares," did it sound good to you?

A What do you mean by "good"?

Q Did you believe him?

A I believed him, yes.

Q You didn't know whether you were being led on either, did you?

A I figured he did.

Q Because he said it.

A No, because they initiated the deal. Why would he say that he didn't do it? From the beginning he has been saying how he had this greatdeal.

Q Did Rosenberg ever call you up and tell you that he had a great deal?

A No.

Q You are the one who always called him up and sought him out, is that right?

A By direction from his partner.

MR. BERGER: Objection, your Honor. I move to strike.

THE COURT: Yes, motion granted.

Q Is it not a fact that Mr. Rosenberg, in the course of the conversation with you, told you that Franklin was a good company, that it had never been in any trouble before; isn't that right?

A I believe that was in the tape, yes.

Q And did you know anything to the contrary?

A No.

Q As a matter of fact, didn't he tell you that he had hoped that by virtue of certain land acquisitions that the stock might be worth some day as much as $3 a share? Isn't that correct?

A I believe he mentioned that in the tape, yes.

Q And then didn't you say to him that "This fictitious, prospective buyer knew that the company was a stiff"?

A Yes, I did.

Q Would you explain to these jurors why,after you had been told that this was a good company, never been in any trouble, why you then made up the false story that this prospective buyer knew that the company was a stiff?

A Well, because in fact if the company had merit he wouldn't have to bribe me to buy the stock.

Second of all, every stock swindler always has a story about the stock, about why it has such great merit

and why it is going to be the greatest thing in the world. So when I told him it was a stiff and he said, "Well, all right," then he went on to the next thing, meaning weboth knew that none of this embellishment was necessary to describe the stock, the relative merit of the stock.

Q Did you know what was going on in his mind?

A I just assumed what he was thinking.

Q You assumed again what someone else was thinking.

Isn't it a fact that the reason you said it was a stiff was because you wanted to make things sound as bad as possible on that taped conversation that you knew was being taped?

A I said it was a stiff because I figured it was a stiff. Why would he try to bribe me to sell the stock? If it had such great merit, he would want to sell it for $3.

Q You checked the stock out, didn't you -- never had been in trouble?

A I checked the price. I didn't do any research. It must be in some trouble. If it wasn't, it wouldn't be half a buck.

MR. AIDALA: Judge, I move that that be stricken.

THE COURT: No. I think the form of your question permitted such a response.

Q In other words, is it your testimony that every

stock that is selling for about 62-1/2 cents has to be in trouble -- is that your testimony?

A Virtually everyone that I have known in my business career that sold that cheap, there was something wrong corporately with their business or financially or in some aspects.

Q Those are the ones that you have been involved with -- right?

A Yes. There are many or that I knew about.

Q You made up your story about having a prospective buyer -- correct?

A Yes.

Q You made up the story about this prospective buyer -- "that the company was a stiff," is that right?

A Yes.

Q You made up the story about Rodman having given you cash before; right?

A Yes.

Q Isn't it a fact and that an absolute condition set down was that you had to direct any orders, isn't that right?

A Yes, he did -- he asked me to direct orders to John Maher.

Q You had to do that. Wasn't that the condition --

you had to direct them?

A I believe it was, yes. Any that I didn't he wouldn't be sure that I was really buying the stock.

Q In Leyner, Dreskin were you familiar with their procedures?

A Yes.

Q Is it not a fact that when you went to buy on behalf of a customer that you submit a buy order to the clerks who work for Leyner, Dreskin?

A Yes.

Q And is it not a fact that those clerks check various brokerage houses to determine the best price they can buy the stock at?

A Yes.

Q And then they direct the order to that house that will sell it to them cheapest, isn't that correct?

A Yes.

Q You yourself had no power to directly place an order, isn't that right, at Leyner, Dreskin?

A No, but I could, you know, tell the order clerk, if he was corrupt, to please do business with this fellow.

Q Well, do you assume that everyone is corrupt, Mr. Noonan?

A No. I said if he was. In fact, he was not.

Q There is no corrupt clerk at Leyner, Dreskin, is there?

A No.

Q And the assumption we operate on is that the clerks aren't corrupt, isn't that correct?

A Yes, it is.

Q And the belief that Mr. Rosenberg would have at that time is that there were no corrupt clerks at Leyner, Dreskin, isn't that right?

MR. LOWE: Objection.

THE COURT: Sustained.

Q Isn't there something else with Leyner, Dreskin concerning stocks which are selling below a dollar and a half?

MR. LOWE: Your Honor, I think that the relevance of this is non-existent to the case at trial.

THE COURT: Yes, sustained.

Q Would you explain to this jury the procedure that a broker at Leyner, Dreskin would have to go through to put in an order for a stock that is selling under a dollar and a half?

MR. LOWE: The same objection.

THE COURT: Yes, sustained.

Q Isn't it a fact, Mr. Noonan, that on Friday,

December the 5th of 1975 when you spoke to Mr. Rosenberg it was clear that there had been no discussion before that date of any stock amount anywhere near 30,000 shares? Isn't that correct?

MR. LOWE: Objection, unless the question is limited to discussion with this witness or discussion that this witness was present at. The implication of that question and the answer --

MR. AIDALA: There is no quarrel with that, Judge.

THE COURT: All right.

Q I am referring to any conversation you had -- I will rephrase it.

When you spoke to Mr. Rosenberg on December the 5th, 1975 -- that was the last conversation that you had with either Mr. Rodman or Mr. Rosenberg, isn't that right?

A Yes.

Q And when you first were speaking to Mr. Rosenberg you mentioned that you had only talked about a few thousand shares, isn't that correct?

A Yes.

Q And then for the very first time you mentioned 30,000 shares, isn't that correct?

A Yes.

Q You had never mentioned 30,000 shares before to Mr.Rodman, had you?

A I don't believe I had, no.

Q You had never mentioned anything about 30,000 shares to Mr. Rosenberg, had you?

A No.

Q And then is it not a fact that on December the 5th, in the very last conversation you had with either of these two gentlemen, for the very first time, that Friday, was any mention made of 150,000 shares --

MR. LOWE: To him?

Q -- is that correct?

MR. LOWE: To him?

THE COURT: Yes.

MR. AIDALA: We went through that.

MR. LOWE: It is not clear.

A I really don't remember.

Q Had 150,000 shares ever been discussed between you and Mr. Rodman before December 5th?

A I don't remember if he did or not.

Q You say you don't remember or you don't kn or that it never did happen, or that it did happen?

A I don't remember.

MR. LOWE: Your Honor, I object to this.

THE COURT: Sustained. He says he doesn't remember.

Q When for the first time did you ever hear the term 150,000 shares mentioned?

MR. LOWE: In what connection?

Q In connection with this case, in a conversation of which you were a part.

MR. LOWE: Your Honor, I think the witness is being unduly harassed.

THE COURT: No, I will permit it.

(To the witness) When was the first time you heard it mentioned?

THE WITNESS: I don't remember really the first time when they mentioned a particular amount.

MR. BERGER: Objection; I move to strike, the use of the word "they."

THE COURT: No, I will permit it. His answer is clear to me, in response to the question: When for the first time did you hear mention of 150,000 shares.

THE WITNESS: I really don't remember when it was brought up.

Q All right. Could I ask you whether this refreshes your recollection -- and I am reading from the transcript of the taped conversation between you and Mr. Rosenberg --

on page 2:

"Noonan: In the beginning, I was just going to do" --

MR. LOWE: This is the transcript which you did not want in evidence, is that right?

MR. AIDALA: Judge, I am going to object to any gratuitous remark by the prosecutor.

THE COURT: Yes, disregard it.

MR. AIDALA: And I now move for a mistrial based on that comment.

THE COURT: Motion denied. The members of the jury will disregard any comments of counsel. The only evidence they will take is the testimony and the documentary evidence. All right.

Q "Noonan: In the beginning, I was just going to do, you know, maybe just a couple of thousand here and make a few bucks, right?

"Bill: Right.

"Noonan: Now, something's developed where I can think I can get a guy to take down about 30,000 shares."

Do you remember saying that in that conversation on December 5th?

A Yes.

Q And isn't that a fact, that the first time any

mention was made of anything beyond a couple of thousand was in that conversation on December the 5th?

A On my part, yes.

Q Isn't it a fact that is the very first time anything was said by Mr. Rodman or Mr. Rosenberg concerning anything beyond a couple of thousand?

A I really don't remember.

Q Are you aware of the fact that the indictment in this case charges that the two defendants alleged to sell 150,000 shares of Franklin Properties?

A I don't know what the indictment states. I know it was mail fraud or something -- I don't know. I never read it.

Q Is it not a fact that the very first time that any mention was made to you by anyone of 150,000 shares was on Friday, December the 5th, 1975?

MR. LOWE: That has been asked and answered.

THE COURT: Yes, sustained.

Q Before you heard this remark which I am going to read, had you heard anything about 150,000 shares -- "Actually what happened is I accumulated about 150 shares of free trading stock" --

Before that time had you ever heard mention of 150,000 shares?

(Mr. Lowe stands.)

THE COURT: Sustained.

MR. AIDALA: I respectfully except.

THE COURT: We have been over this so many times, and it is repetitious now.

MR. AIDALA: I have no further questions.

THE COURT: Any redirect?

MR. LOWE: Yes, your Honor, I have some.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Noonan, you and I had a conversation at lunchtime, is that right?

A Yes.

Q Did anyone tell you that was illegal?

A No.

Q Or that there was anything wrong with it?

A No.

Q Did anyone tell you you couldn't do it?

A No.

Q When you testified in response to Mr. Aidala's question did you say everything you recalled about the conversation between yourself and me this afternoon?

A Yes, I did. Everything that I recalled, except about lunch or where I was going to eat or what time to be back.

Q Was there any conversation on the subject of truth?

MR. BERGER: Objection, your Honor.

THE COURT: I'll permit it.

A I seem to recall that, yes.

Q What do you recall was said about that subject?

A You said just always tell the truth and that was it.

Q Mr. Noonan, what was the purpose of recording those telephone conversations, of making the calls, having the conversations and making the recordings of them? What was the purpose?

MR. AIDALA: Objection, your Honor, unless he is talking about his purpose.

Q What did you believe you were doing at that time?

A I wanted to reinforce the story that I had

told you about having been approached to get involved in an illegal deal, and the purpose of my recording that was to bring out the fact that I was telling the truth.

Q To get some evidence, right?

A Yes.

Q By the way, towards the end of your cross examination with Mr. Aidala he made reference to, in questioning you, the last time you spoke to Rodman or Rosenberg was December 5, 1975. When was the last time you spoke to Mr. Rodman?

A I don't remember the last day but it was after December 5th.

Q How long after?

A Maybe a week. Maybe a little less.

Q How did that come about?

MR. BERGER: Objection, your Honor. Outside the scope of the indictment.

THE COURT: Sustained.

MR. LOWE: I'll make an offer, your Honor.

THE COURT: Ask another question. We'll do that outside the presence of the jury.

MR. LOWE: Thank you, your Honor.

Q Also, Mr. Noonan, Mr. Aidala asked you about

reading the transcript of testimony you gave on the prior occasion.

A Yes.

Q Did anybody tell you you could not do it?

A No.

Q Did anybody tell you there was anything wrong with it?

A No.

Q Did anybody tell you not to do it?

A No.

Q As a matter of fact, isn't the transcript of your prior testimony a public record?

A I don't know.

Q In your cross examination by Mr. Berger, there was some testimony or reference to the fact that there was nothing in November to indicate that this was an illegal deal. Do you remember that?

A Yes.

Q There was nothing to indicate anything about the nature of the deal in November, was there?

A Just that it involved stock and that's all.

Q What's illegal about the deal that was offered to you?

MR. BERGER: Objection, your Honor. Outside.

THE COURT: Sustained.

MR. LOWE: I have nothing further, except I would like to raise two points.

THE COURT: Mr. Berger, anything further?

RECROSS EXAMINATION

BY MR. BERGER:

Q Mr. Noonan, during the lunch hour do you know why Mr. Lowe reminded you of your obligation to always tell the truth?

A No.

MR. BERGER: No further questions.

RECROSS EXAMINATION

BY MR. AIDALA:

Q You just testified that you had never been told you should not discuss the case with the prosecutor after his direct examination was completed, is that correct?

A State that again.

Q You just testified, in response to Mr. Lowe's questions, that no one ever told you it was improper in any way for you to discuss the case after you finished your direct testimony. Do you want to change

that now?

A No.

Q Is it not a fact that last week after your direct testimony was completed I requested Judge Gagliardi to instruct and direct that there be no conversation concerning this case between yourself and the prosecutor and that you were so instructed by the judge?

A That was the last case. Nobody said anything to me today.

MR. AIDALA: I have no other questions.

THE COURT: Anything further?

MR. LOWE: Your Honor, I do have two things.

THE COURT: I want this witness to stand by in the witness room.

Do you have another witness?

MR. LOWE: Yes, your Honor.

THE COURT: You stand by in the witness room.

THE WITNESS: Yes, your Honor.

(Witness excused.)

MR. LOWE: The government calls Andrew J. Calvin.

MR. AIDALA: Before the witness comes in,

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there should be something in the absence of the jury or let's approach the bench.

THE COURT: Step up.

(At the side bar.)

MR. AIDALA: Based on some material that the U. S. attorney gave to me, I fail to see what relevance it has to this case and therefore I would think that we should have an offer of proof rather than waiting for this witness to give testimony which then may very well have --

THE COURT: The government is not required to give you any 3500 material --

MR. LOWE: I gave the 3500 yesterday.

You wanted to know where the 150,000 shares was in the last trial and I'll prove it in this trial.

MR. AIDALA: Only if he can establish --

MR. LOWE: I can, your Honor.

MR. AIDALA: Before this witness is finished I want --

THE COURT: We have not finished with Noonan.

MR. AIDALA: Based on the ignoring of your Honor's instructions to the prosecutor and to the witness --

THE COURT: There was no instruction re-

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quested this time, although it is the usual thing that the witness not talk to the attorney when on the stand.

Let's get the witness on the stand and take care of the rest of it in the absence of the jury.

(In open court.)

MR.LOWE: That witness is not available. I therefore call Roy L. Patterson.

R O Y L. P A T T E R S O N, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Where do you live?

A Littleton, Colorado.

Q What is your occupation out there?

A I am a truck tire and battery salesman for Sears, Roebuck.

Q Do you have an account at the brokerage firm of John R. Maher Associates, Inc.?

A No, sir.

Q Did you ever open an account there?

A No, sir.

Q Did you ever buy any stock there?

A No, sir.

Q Did you ever sell any stock there?

A No, sir.

Q Did you ever receive any checks from that brokerage firm?

A No, sir.

Q Directing your attention, sir, to Government's Exhibits 9, 9A and 9B for identification, I would like you to look at the back of each of these documents and tell me if any of the signatures there are yours?

(Pause.)

A No, sir.

Q Do you have an account in a bank in New York City?

A No, sir.

MR. LOWE: I have no further questions.

MR. BERGER: Your Honor, at this time I would move to strike all of the testimony based upon relevancy. I would move vor a severance, and I would move for a mistrial.

THE COURT: All three motions are denied. You may renew the motion in connection with relevancy.

MR. AIDALA: The same motions.

THE COURT: Same ruling.

Next witness.

MR. BERGER: Those have not been offered in evidence?

MR. LOWE: Not yet.

THE COURT: You may step down.

Thank you.

(Witness excused.)

MR. LOWE: The government calls Mr. Jossin.

T I M O T H Y M. J O S S I N, called as witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Tell us where you live.

A Hauppauge, Long Island.

Q Mr. Jossin, do you have an account at the brokerage firm John R. Maher Associates?

A Yes, we do.

Q Have you bought or sold any stock in that account?

A We sold some and then we bought some.

Q Have you ever had occasion to either purchase or sell the stock of Franklin Properties, Inc.?

A No.

MR. LOWE: I have no further questions.

MR. BERGER: Your Honor, same objections as to the previous witness' testimony.

THE COURT: Same ruling.

MR. AIDALA: Same objections.

THE COURT: Same ruling.

(Witness excused.)

MR. LOWE: The government calls Mrs. Jossipn.

R O S E J O S S I N, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Is that Mrs. Jossin?

A Yes.

Q Are you the wife of Timothy Jossin?

A Yes.

Q You live with him in Hauppauge, Long Island?

A Yes.

Q Do you have an account, a brokerage account,

at the firm of John Maher Associates?

A Yes.

Q Is that a joint account between you and your husband?

A Yes.

Q Have you ever either bought or sold the stock of Franklin Properties, Inc. at John Maher Associates?

A No.

Q Or anywhere else, for that matter?

A No.

MR. LOWE: I have no further questions of this witness.

MR. BERGER: Same objections, your Honor.

MR. AIDALA: Same objections.

THE WITNESS: Same ruling.

THE COURT: You may step down.

(Witness excused.)

MR. LOWE: The government calls Andrew J. Calvin.

ANDREW JOHN CALVIN, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Where do you live?

A Denver, Colorado.

Q What is your occupation?

A Housekeeping, at Fitzsimmons Hospital.

Q Do you have a brokerage account at the brokerage firm of John R. Maher Associates, Inc. in New York City?

A No.

Q Do you have any stock brokerage account anywhere?

A Not that I know anything about.

Q Did you ever buy or sell any stock through the brokerage firm of John R. Maher Associates, Inc.?

A I never have sold any stocks.

THE COURT: Or bought any?

THE WITNESS: Bought either.

Q Did you ever receive any stock certificates, pieces of paper, from John R. Maher Associates, Inc.?

A No. I never have.

Q Did you ever receive any checks from John R. Maher Associates, Inc.?

A No.

Q I would ask you, Mr. Calvin, to look at what has been marked as Government's Exhibits 8, 8A, and 8B, all for identification, and look at the back of them and tell me whether your signature appears on any of those documents?

(Pause.)

A Not mine.

MR. LOWE: No further questions.

MR. BERGER: Same objections, your Honor.

MR. AIDALA: Same objections.

THE COURT: Same rulings.

You may step down.

(Witness excused.)

MR. LOWE: The government calls Lloyd Landow.

L L O Y D J. L A N D O W, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Where do you reside?

A Dix Hills, New York.

Q Where is your place of business?

A Commack, New York.

Q Do you have a brokerage account at the brokerage firm of John R. Maher Associates, Inc.?

A No, sir.

Q Did you ever buy or sell any stock of Franklin Properties, Inc.?

A No, sir.

Q Did you ever receive any stock of Franklin Properties, Inc. from John Maher Associates?

A No, sir.

MR. LOWE: I have no further questions.

MR. AIDALA: One moment, your Honor.

(Pause.)

CROSS EXAMINATION

BY MR. AIDALA:

Q Mr. Landow, do you know whether somebody

either did buy or sell Franklin Properties stock using your name?

A I don't know for sure.

Q Do you have any reason to believe that somebody did?

A I have reason to believe that somebody might have used my name, otherwise I would not be here.

Q It was somebody who knew you?

A I don't believe so, but I don't know for sure.

Q Do you know Mr. Rosenberg?

A No.

THE COURT: Any redirect?

MR. LOWE: Nothing, your Honor.

THE COURT: You may step down.

(Witness excused.)

MR. AIDALA: So that we don't have to get up, can we have a running objection?

THE COURT: No, no. You examined this witness. You make any objections you have at the time and I will rule on them.

MR. LOWE: The government calls Victor Quadri.

V I C T O R Q U A D R I, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q What is your occupation?

A I am a clerk in the legal department of Chemical Bank.

Q Were you subpoenaed to produce certain records of the bank here today?

A I was.

Q Showing you Government's Exhibit 12 for identification, can you tell us, is that a copy of a record made and kept in the ordinary course of the business of the Chemical Bank?

A It is.

Q Is that in the regular course of the business of the Chemical Bank to make and keep such a record?

A Yes.

Q Without telling us any specifics about that document, what kind of document is that in general?

A A monthly statement.

Q For what?

A For the account of William Rosenberg, whose account number is 919252145.

MR. LOWE: The government offers Exhibit 12 in evidence.

MR. AIDALA: May I approach the bench?

THE COURT: No. Is there an objection to authenticity?

MR. AIDALA: I would like to state the grounds.

THE COURT: State them.

MR. AIDALA: In front of the jury?

THE COURT: State them.

MR. AIDALA: I feel it is a violation of my client's Fifth Amendment rights for them to seize and produce these records without a proper offer from the government. These go from February, 1974. This case has to do with approximately November and December of 1975. I think it is highly prejudicial and I object to it on all of ghose grounds.

I also object on the ground your Honor asked me to state it in front of the jury in that it might cause some prejudice.

THE COURT: Just state you object to everything except November and December.

What is the relevance, Mr. Lowe? I would limit it to the end of November and the early part of December.

MR. LOWE: I will have to show that but I can't do it through this witness.

THE COURT: There is no question as to the authenticity of these records?

MR. AIDALA: I would assume they are authentic. I will not object to their authenticity. I accept the man's word.

MR. LOWE: That's all I want at this point.

Anything further.

BY MR. LOWE:

Q I would like you to look at the documents attached to Government's Exhibits 8, 9 and 10, each for identification, and ask if you can tell us by looking at those documents whether they were deposited into the Chemical Bank?

MR. AIDALA: I will object on the grounds he has testified about something I don't believe is in evidence. It has not been offered in evidence.

THE COURT: He has to ask some questions

before you can admit certain things into evidence.

Did those checks go through the Chemical Bank?

THE WITNESS: They have.

MR.LOWE: It's a very specific question, not just "go through."

Q Were they deposited into the bank?

A They were deposited into the bank.

Q Each and every one of the documents on each of these exhibits, is that correct?

(Pause.)

A Yes, sir.

MR. LOWE: I have no further questions.

MR. AIDALA: They are not offered?

MR. LOWE: No.

MR. BERGER: This witness went through authenticity?

MR. LOWE: He went to the specific fact on this subject.

MR. BERGER: I move to strike his testimony based upon relevancy. In addition to that, not knowing the dates on the checks --

THE COURT: Take a look at them. They are there.

MR. BERGER: Based upon the fact, your Honor, that the checks are dated prior to the date set forth in this indictment; and bearing in mind that this is a conspiracy case, the evidence may be very slightly probative on some issue I am not familiar with, but the prejudicial effect upon my client --

THE COURT: They have not been offered yet.

MR. BERGER: They are creating an innuendo.

THE COURT: The offer has not come in. If it is not in the, the jury will disregard it.

MR. BERGER: Thank you, your Honor.

THE COURT: You may renew your motion to strike this witness' testimony on the ground of relevancy. You may renew the motion. At the moment I can't tell whether it is relevant or not.

MR.BERGER: I make that motion.

THE COURT: I deny it. You may renew it.

MR. AIDALA: On behalf of Mr. Rosenberg I make the same motion.

THE COURT: I deny it at this time subject to it being renewed in the event certain things occur.

Anything further?

You may step down.

(Witness excused.)

(Continued on next page.)

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MR. LOWE: The government calls Mr. Protas.

THE COURT: How long will this witness be?

MR. LOWE: Very brief, your Honor.

S I D P R O T A S, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Protas, where do you reside?

A 100 Bellevue Terrace, Bloomfield, New Jersey.

Q What kind of premises is that?

A It is a one-family house.

Q And how long have you resided there?

A Since 1956.

Q Who lives there with you, if anyone?

A My family.

Q Do you know a gentleman named Michael Scott?

A No, I don't.

Q Have you ever met a gentleman named Michael Scott, to your remembrance?

A No, I haven't.

Q Have you ever received any mail from a gentleman by the name of Michael Scott, to your memory?

A No, I haven't.

Q Do you have a brokerage account at the brokerage firm of John R. Maher Associates, Inc.?

A Yes, I have.

Q Did you have any transactions in that account?

A One transaction that I can recall.

Q What was that transaction?

A A thousand shares of Tucker Drilling.

Q Did you at any time buy or sell the stock of Franklin Properties?

A No, sir.

Q And at any time did you receive delivery of stock certificates of Franklin Properties?

A No, sir.

MR. LOWE: I have no further questions.

MR. BERGER: The same objection, your Honor.

MR. AIDALA: The same objection.

THE COURT: All right, the same ruling.

You may step down.

(Witness excused.)

MR. LOWE: Your Honor, I have another real quick one.

THE COURT: Surely.

MR. LOWE: The government calls Arthur Fine.

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A R T H U R F I N E, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Fine, by whom are you employed?

A John Maher Associates.

Q How long have you worked there?

A Approximately five years.

Q Do you know William Rosenberg?

A Yes.

Q Is there anyone at John Maher Associates by the name of "Bill"?

A No.

Q Is William Rosenberg an employee of John Maher Associates?

A Yes.

Q Do you know William Rodman?

A No.

Q Have you ever had occasion to call William Rodman on the telephone?

A Never.

MR. LOWE: No further questions.

CROSS EXAMINATION

BY MR. BERGER:

Q Mr. Fine, my name is Mr. Berger. I represent Mr. Rodman.

Over the period of the five years that you have been employed with John Maher, have customers come in and out of your place of business?

A Customers come in and out? Yes.

Q And do they sit down and at times use the phone?

A They could have. It has happened.

Q Do you have a record of every customer that has come in to John Maher and used the phone?

A No, not at all.

Q You don't have a record of who they called?

A I would have no idea.

Q But you do know that it happens.

A It can happen, yes.

Q Is it a common occurrence?

A No, not every day.

Q But it is something that does happen generally.

A I say it can happen.

Q Does it happen?

THE COURT: If you are cross-examining the witness on an area, you adopt him as your own witness now.

Q Does it happen?

A You mean when they call? Yes.

MR. BERGER: No further questions.

THE COURT: Mr. Aidala?

MR. AIDALA: No questions.

THE COURT: All right, you may step down.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Is there any other witness that is going to take a minute or two?

MR. LOWE: No, your Honor, there isn't anyone that will take a minute or two.

THE COURT: All right, it has been a very short day of work here today, and that does not make me very happy.

MR. LOWE: Your Honor --

THE COURT: Yes?

MR. LOWE: Your Honor, it would take only a minute or two to decide one way or the other whether we are finished with somebody.

?? MR. BERGER: I don't think so, your Honor.

MR. LOWE: I see, your Honor.

THE COURT: All right. It is not our usual working day here, but it happens sometimes.

I have three short pretrial conferences scheduled

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for 9.30 tomorrow, and if they weren't short before, they are going to be short tomorrow morning, so we should start at 9.30 in the morning. I may be a minute or two delayed with the conferences.

I know you do not like to hear me say it again, because you may think it is a reflection on you, but please do not discuss the case and do not let anybody discuss it with you.

Have a pleasant evening.

MR. LOWE: Your Honor, there is a problem that if we could not start until 10 o'clock I have a lot better chance for resolving it, having to do with what I promised to deliver to your Honor tomorrow.

THE COURT: I understand, but that is all right, we can get another witness on.

MR. LOWE: Well, Judge, I have to be able to --

THE COURT: I understand.

(To the jury) Why don't you come in at 9.30, and if we are ready we will go ahead, so that we will get that time in.

Have a pleasant evening.

(The jury left the courtroom.)

(The following occurred in the absence of the jury.)

THE COURT: Will you get Mr. Noonan on the stand.

Mr. Noonan, you were asked before on cross-examination a question which you refused to answer, and you gave the grounds of your refusal the fact that the answer might tend to incriminate you. Is that so?

THE WITNESS: I don't remember it.

MR. LOWE: Not at this time.

THE WITNESS: Is that the extortion question, your Honor?

THE COURT: Yes.

MR. LOWE: That was the last trial.

THE COURT: The last trial, all right.

There was a question put to you and you refused to answer it.

THE WITNESS: Yes.

THE COURT: Do you remember that?

THE WITNESS: Yes, your Honor.

THE COURT: Without going into the details of what is behind it, can you tell me what in your mind is the reason for your not responding to that question?

THE WITNESS: Well, from my own standpoint I am not -- I know there is something in the file over there in Brooklyn -- I believe that is what the question is.

MR. LOWE: I think the question had to do with what he was doing, what his involvement with the agency that he was talking about had to do with it. That was the general nature of the question.

THE COURT: Is that it, Mr. Aidala?

MR. AIDALA: The record will reflect the exact question.

THE COURT: Well, you are the one that asked the question. I don't have the record before me. I haven't received any transcript yet.

MR. AIDALA: It was based on Mr. Lowe's original question that a representative of the United States Government was involved in the dismissal of the Brooklyn case involving his intention. Then he asked whether that agency had anything to do with this case, and the answer was "No, nothing whatsoever to do with it. And of course I said it opened the door, and I asked what it had to do with it -- to explore rather than accepting the testimony of this witness.

THE COURT: All right, you refuse to answer Mr. Aidala's question with respect to that?

THE WITNESS: Yes, your Honor.

THE COURT: Again only give me your reasons why you do not want to answer that question.

THE WITNESS: I think the defendants might use the information to harm me.

THE COURT: Physically, bodily?

THE WITNESS: Or divulge it to somebody that might act in that way, your Honor -- maybe.

THE COURT: And you have reason to believe in your own mind that it might eventually in some way lead to some threats of bodily harm against you individually?

THE WITNESS: It might, your Honor.

THE COURT: It might?

THE WITNESS: I don't know that it will, but the potential is there.

THE COURT: And that is the sole reason for your refusal to answer that question?

THE WITNESS: Well, what I did for them has nothing to do here.

THE COURT: I know that, but is that the sole reason for your refusal to answer the question?

THE WITNESS: I believe it is, your Honor.

THE COURT: All right, if you will clear the courtroom I will take from this witness -- and we will order sealed the necessary facts, which may not make it necessary for you to produce any record, Mr. Lowe, which is another reason why we might start at 9.30 tomorrow morning. And

if I can satisfy myself as to that, I think the U.S. Attorney can be present on this because this might be the information you will want to elicit, and then I will determine whether it should remain sealed or not.

Why can't we go through that procedure?

MR. LOWE: This is what I was going to suggest, Mr. Noonan has expressed a reluctance even to disclose some of this information to me.

THE COURT: Well, will you disclose it to me and to the court reporter if I order the record sealed?

THE WITNESS: Yes, your Honor.

THE COURT: Because in the event --

THE WITNESS: I trust you, your Honor.

THE COURT: Well, I want to tell you what the problem is. In the event that there were a conviction in this case and there was an appeal, the Appellate Court would have to have the necessary information to see whether I properly did not direct you to answer the question.

THE WITNESS: And it would become a public record?

THE COURT: It would not become a public record; it would be sealed, and it would be sealed before the Court of Appeals, and they would reseal it again, and

they would be the only ones privy to it -- the judges on the Court of Appeals.

MR. LOWE: What I am saying, if your Honor please, I think perhaps in the interests of everyone concerned it might be better that the United States Attorney is not represented either.

THE COURT: All right.

MR. LOWE: Since the defendants are not.

THE COURT: All right clear the courtroom.

THE CLERK: The courtroom is to be cleared.

(Adjourned to March 26, 1976 at 9.30 a.m.)

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UNITED STATES OF AMERICA
vs.
WILLIAM RODMAN and
WILLIAM ROSENBERG.

76 Cr. 43

New York, March 26, 1976;
9.30 A.M.

Trial resumed.

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(The following in the absence of the jury.)

THE COURT: Yes, Mr. Berger.

MR. BERGER: Last night on reviewing the recording between Mr. Noonan and Mr. Rodman, I discovered for the first time that the transcript that we have been using is inaccurate, detrimentally so and substantially so. I think the reason for the inaccuracy not having been discovered before was my not paying close attention, having read the transcript --

THE COURT: Which transcript?

MR. BERGER: The transcript between Mr. Noonan and Mr. Rodman on the 12/4/76 conversation.

THE COURT: All right, what particular page?

MR. BERGER: The third page.

THE COURT: All right.

MR. BERGER: Where Mr. Rodman says at the bottom_

"Um hum. So when are you gonna figure out what you're finally doing with this guy," and then it says "(inaudible)," and because it said "inaudible," I did not listen too closely. Unfortunately, or perhaps fortunately --

THE COURT: Do you have it?

MR. BERGER: I have it with me. It is not "inaudible."

THE COURT: Where is the tape?

MR. LOWE: It is right here, your Honor.

THE COURT: Do you have it at that particular point?

MR. LOWE: I don't, but we can get it.

MR. BERGER: Your Honor, I can play my tape and then we can play the government's tape. I have it.

THE COURT: What is your tape made from?

MR. BERGER: It was supplied to me by Mr. Lowe.

THE COURT: Do you have the master tape?

MR. LOWE: Well, Mr. Doonan has it outside, your Honor.

THE COURT: Let us get the master tape.

MR. LOWE: This is the one that is in evidence.

THE COURT: I understand that, but let us get the master tape.

Have you gotten to the point?

(Mr. Lowe plays the tape.)

MR. LOWE: It is just about there, your Honor (playing tape).

Your Honor, we are there at this point.

THE COURT: All right, go ahead.

Do you want to bring it up to me, please?

MR. LOWE: Certainly (handing to the Court).

The volume is turned up pretty high -- it may blow your ear off or not, depending on which counsel is talking.

(The Court plays the tape.)

MR. BERGER: "with this guy at Federal" -- the words "at Federal" were put down as "inaudible."

(The Court plays the tape again.)

MR. BERGER: "at Federal."

THE COURT: It sounds something like that.

Do you have any comments to make, Mr. Lowe?

MR. LOWE: I have been unable to be satisfied that I know what that says, which is why I always put it that way. It sounds to me like "aferal" -- that is the sound; nor is there any reference to anything like that on the tape.

(The Court plays the tape again.)

THE COURT: I could hear it as saying "at

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Federal."

MR. BERGER: That is the way I hear it, your Honor.

THE COURT: Would the master tape be any better?

MR. DOONAN: No.

THE COURT: It is exactly the same?

MR. DOONAN: Exactly the same.

THE COURT: So what is your proposition?

MR. BERGER: Well, your Honor, I would like the words "at Federal" to replace the words -- the word "inaudible," and I would like the jury to be advised of that fact, of the fact that the words that were heretofore marked "inaudible" are "at Federal."

THE COURT: Any objection?

MR. LOWE: Your Honor, with the suggestion that that is what they are, that is what you can hear. I don't think you can hear that unless you have that suggestion. I think that he may argue that is what it says to the jury. The jury can listen to it and decide for themselves what it says, and I do not think that they should be instructed that that is what is on the tape.

THE COURT: All right. Maybe what we ought to do is play it to the jury several times and let them hear it and let them make up their minds as to what it is,

as to whether it is "inaudible" or whether it says something else,and you can argue what you want to the jury.

Is that satisfactory to you?

MR. BERGER: Yes, thank you, except one other thing: there has already been a suggestion made that it is "inaudible." That is one problem. The other problem --

THE COURT: Well, the transcript has been submitted to you from the previous trial, and prior to this you reviewed the transcript and you made no comment on it. Now after it has played to the jury you come in and raise this question, and you are trying to correct it.

I do not think there is any inference that we ought to make about the fact that it got in as "inaudible" and not anything else.

MR. BERGER: I am not suggesting that, your Honor. My suggestion is that due to the fact that the words "inaudible" -- the word "inaudible" is written on the transcript, henceforth if the jury requires in its deliberations to listen to the tape it should not have the transcript because again the words "inaudible" or the word "inaudible" is on that transcript.

THE COURT: Well, if we reach that point we will worry about it -- if we do reach it, I will caution

them again that there is some question as to whether or not that is what it said there is actually discernible or whether it is "inaudible." It is for their determination to make, that they will be governed by the tape and not by the transcript.

Now what do you want me to do about this?

MR. BERGER: Your Honor, I think that we should play the tape to the jury at this time and raise the issue at this time that there is a question as to whether the words are inaudible.

THE COURT: Or whether they say something else.

MR. BERGER: Or whether they say something else. I suggest that we say "at Federal," because just as other words in the transcript have been put down because the government believed that's what they said -- for example, where Rodman says "receipts and things," and I believe it says "fees and things." Because of the fact that the government has prepared the transcript, I don't think we should be prejudiced. I believe a suggestion has been made by "receipts and things."

I feel that we should state that it is the defendant Rodman's contention or it is the defense contention that the words are "at Federal." Now, if Mr. Lowe wants to say it is his contention that the words are something other than "at Federal," I think he should be able to say that.

THE COURT: That's what you can argue to the jury. I am going to ask them merely to listen

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to it now. You have had more than ample time to raise these questions.

MR. BERGER: Your Honor, there has been no prejudice that cannot be corrected up to this time.

THE COURT: I understand, but I am not goint to make any specific explanation.

All right, if you want it done now, just let me make sure that I can get it.

All right, put the transcripts on their seats at this particular point.

MR. LOWE: I suggest maybe we should not give them the transcripts for this particular purpose.

MR. BERGER: They have to know where the inaudible is.

MR. LOWE: If the defense wants them to have the transcript, I certainly have no objection.

MR. BERGER: I think they should know the place they are looking at.

THE COURT: Let's put the transcript on the seats.

MR. AIDALA: Judge, based on Mr. Lowe's just-uttered remark, I want it to be clear that on behalf of Mr. Rosenberg I still maintain my objection

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to this jury ever having been given the transcripts and this points up one of the reasons for it.

THE COURT: One of the things it points out is that when counsel prepare their case, you take care of the transcript. You had them a long time ago. You had plenty of chances to raise the question before it went to the jury, and I believe your failure to do is a waiver of any right to do so. You have made your objection, there is a disagreemennt and that's the end of it.

MR. BERGER: Your Honor, one more point before the jury comes in which is not my point --

THE COURT: Only take up your own points, Mr. Berger.

MR. AIDALA: Judge, before the jury comes in I think there are other matters I think your Honor would want to deal with, unless your Honor wants to bring the jury in and let them go out.

THE COURT: No, I am not going to do that.

MR. AIDALA: May I ask what the status is insofar as the last witness, Mr. Noonan?

THE COURT: I examined him yesterday and a transcript of his testimony is being prepared

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and will be sealed. On the basis of what I heard there yesterday, the eliciting of any information with respect to that, his refusal to answer is based upon reasonable grounds, and I believe that even if it were permitted to elicit that information it would be merely cumulative and it would have no effect whatsoever on the extent of the cross examination in any way whatsoever.

MR. AIDALA: Then, Judge, for the record, I ask that the sealed record that Mr. Lowe referred to be turned over to this court for the following reason: Counsel obviously, due to the proceeding, was unable to question Mr. Noonan. Your Honor therefore has to rely solely on his questioning of Mr. Noonan. Obviously it is counsel's position that Mr. Noonan's credibility is sorely in issue. I therefore think that this court should and I request the court receive that sealed record, and that the court examine it to determine the credibility of Mr. Noonan, whether what Noonan told your Honor is in fact the truth, the whole truth and nothing but the truth, or whether there are certain things that were not brought to your Honor's attention, and I would ask that that record then be marked and if your Honor feels that it

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remain sealed, it will be remained sealed but be part of this record so that if necessary some appellate court would have the opportunity to examine it, and that's my request.

THE COURT: I indicated to Mr. Lowe yesterday that after my hearing Mr. Noonan, that I didn't feel it was necessary for me to review any file. If the file is here, I have no hesitancy in reviewing, but he indicated it would take some time to get it.

Do you have the file or not?

MR. LOWE: I don't, your Honor. I told the people that they didn't have to bring it.

THE COURT: If I did want to look at it, how long would it take?

MR. LOWE: How long would it take to get, your Honor?

THE COURT: Yes.

MR. LOWE: Probably at least a couple of hours.

THE COURT: Well, maybe in the interests of completeness, if you can ask them to get the file here and make it available to me, I will look at it this afternoon.

MR. LOWE: Just so the record is clear,

Mr. Aidala has been referring to a sealed record. I am not in possession of a sealed record.

THE COURT: I think he has misstated it.

MR. LOWE: The file which I am talking about is a file which is the property of and in the possession of a government agency. It is not sealed. There is a sealed record, as we all know, over in the Brooklyn Supreme Court.

THE COURT: I understand. The record you are getting to me is the record of another agency which I inquired of Mr. Noonan in the absence of everyone.

MR. LOWE: May I have Mr. Aidala on the record saying that that's what he is referring to?

MR. AIDALA: Judge, that is what I am referring to.

THE COURT: All right. Will you attempt to get that here?

MR. AIDALA: Judge, there is another matter.

MR. LOWE: Perhaps at this point Mr. Noonan should be excused. I believe it relates to him.

THE COURT: Yes.

MR. AIDALA: Quite frankly, Judge, this is something I was very disturbed about and as a result of my experience being a former prosecutor, when I observed and found out yesterday Mr. Lowe, in the middle of cross examination with the prosecutor's main witness, was fully discussing for a lengthy period of time, Judge, the testimony of that witness, the facts of this case, I was shocked. I think last week when I asked your Honor to give an instruction, your Honor's reaction to my request was that my request was not necessary, that it was so clear that any prosecutor with any experience would know that he is not to question or speak to a witness after that witness finishes his direct examination. But nevertheless, despite your Honor's feeling that -- it is well known, your Honor did give that instruction. He gave that instruction while Mr. Lowe was present and while the witness was present.

I think that was a flagrant disregard, what Mr. Lowe did, of what every prosecutor knows not to do, a flagrant disregard of your Honor's instruction, and before I make any suggestion of what I think should be done, I am sure your Honor has given it some thought over the evening and I am asking this court

what it intends to do as a result of the prosecutor's conduct.

MR. LOWE: May I speak, your Honor?

THE COURT: Yes, Mr. Lowe.

MR. LOWE: As an assistant United States attorney, representing the Government of the United States of America, I believe that it is my responsibility to insure that no matter what, to the best of my ability any witness I put on the stand gives truthful answers to questions which he is asked.

As a result of his answers to the cross examination by Mr. Berger relating to his purpose in asking questions on the taped conversations, as I sat there and listened to the questions and the answers, I knew very well that the truthful answer was that "I was asking those questions in an attempt to elicit evidence from them that could be used against them and to support my story that I had previously given to the United States attorney."

There is no other way, your Honor, that I could accomplish what I consider to be an overriding duty to see that the truth is brought to the attention of the court and jury other than to speak to Mr. Noonan and to ask him in a way that he would understand what

was being asked of him, namely, my reminding him that the absolute truth is what everyone is after, and to ask him the question in such a way that he could not miss its point, to satisfy myself that my obligation, both personal and as a representative of the government would be satisfied to have the truth brought to the attention of the court and the jury.

I assume the purpose of cross examination is to bring out the truth and to the extent that it does anything other than attempt to bring out the truth, it is not particularly proper or relevant and I do not think that anything I did in talking to Mr. Noonan in any was improper, unethical or in violation of any duty that I have. Indeed, I believe it was my duty to do so to see that the record became clear.

MR. AIDALA: Judge, he had the opportunity on redirect examination.

THE COURT: I don't think we have to hear anything further. I intend to do nothing about it.

Very well, jury in the box.

MR. AIDALA: May I make my motions, Judge?

THE COURT: I thought you had.

MR. AIDALA: I think if your Honor does nothing about in essence your Honor is saying the prosecutor can violate the court's instructions.

THE COURT: What is your motion? Just give me your motion. I don't need any arguments.

MR. AIDALA: Yes, your Honor. I move there be a mistrial granted, and I move further that I be allowed to call Mr. Lowe to the stand as a witness and question him about that, because I want to be able to argue to this jury that Mr. Lowe didn't like the answers he was getting and that he did something to influence that witness and in fact that witness was influenced in the answers he gave.

Further, Judge, I am going to ask your Honor to instruct the jury that you yourself instructed Mr. Lowe and the witness that they were not to discuss anything after the witness' direct testimony.

THE COURT: I did not do so in this case.

MR. AIDALA: Judge, you did so a week ago.

THE COURT: Mr. Aidala, I did not do so in this case.

MR. AIDALA: Are you saying that you deem him not to be on knowledge and on notice based on the

fact that of his own experience --

THE COURT: I said in this case I did not tell him not to do so.

MR. AIDALA: Does that mean he has the right to do so, Judge?

THE COURT: No.

MR. AIDALA: Will you please tell that to the jury?

THE COURT: No, I will not tell that to the jury.

MR. AIDALA: I respectfully except.

THE COURT: Do you intend to call Mr. Lowe as a witness?

MR. AIDALA: Yes.

MR. LOWE: I have no objection whatsoever.

THE COURT: You better get another assistant down here.

MR. BERGER: Your Honor, I object strenuously and I ask at this time for a severance.

THE COURT: You gentlemen better decide between yourselves whether you want Mr. Lowe on the stand or not.

MR. BERGER: Your Honor, I represent Mr.

Rodman and I do not represent Mr. Rosenberg.

THE COURT: Then you better talk to Mr. Aidala about the suggestion is making.

MR. BERGER: I believe it would be highly prejudicial to my client for Mr. Lowe to go on the witness stand and I object strenuously. I ask for a severance.

THE COURT: Mr. Aidala, do you still intend to call Mr. Lowe?

MR. AIDALA: You can avoid that by giving the instruction I requested of your Honor, by saying that you did personally tell Mr. Lowe that he was not to --

THE COURT: I am not going to tell this jury an untruth.

MR. AIDALA: One week ago, Judge, you gave that instruction.

THE COURT: I understand that.

MR. AIDALA: If your Honor wishes to do that I will be satisfied by your Honor's instruction to the jury.

THE COURT: I don't think it is necessary. Do you still want to call Mr. Lowe?

MR. AIDALA: For that limited purpose,

yes, Judge. I will ask him one question, namely, whether a week ago, based on a request I made to your Honor, your Honor gave the instructions that after Mr. Noonan had finished on his direct the prosecutor was not to discuss the case with him.

THE COURT: And then you are going to further bring out that no such request was made at this time. Is that what you are going to bring out? Is that what you are going to bring out, that at this time no further request was made?

MR. AIDALA: Then I will have to bring out, Judge, that your Honor's reaction to my initial request, that it was almost unnecessary for me to make such a request because it is a well-known fact that it should not be done.

THE COURT: We are not going to do that.

MR. LOWE: I notice he deosn't want to examine me about what I said to Mr. Noonan.

MR. AIDALA: Judge, I never in my entire experience as a prosecutor --

THE COURT: Look, I have had some experience with you in this case before and I am not very happy with it, Mr. Aidala. As a matter of fact, the experience that I had with you last week would have

properly called for some further action other than the censure that I gave you with respect to your conduct in this case.

MR. AIDALA: Judge, I want your Honor to know that I represent a client.

THE COURT: I understand that.

MR. AIDALA: I have the greatest respect for your Honor and the system of justice we have, but I must protect my client's rights and the only reason I say anything on this record -- your Honor may disagree -- but in my sincere belief, it is because I feel that I have a right to protect Mr. Rosenberg, and that's the only reason why I say what I do to your Honor and what I say on the record.

Now, there is another matter that your Honor should be aware of that happened this morning.

THE COURT: Mr. Lowe, would you have any objection if I instructed this jury that it is customary that a witness not talk with anyone while he is on the stand?

MR. LOWE: I would unless your Honor coupled it with an instruction that the representative of the government has an obligation to see that the truth comes out.

MR. AIDALA: You do that through re-direct examination, your Honor.

MR. LOWE: I don't think it is fair to give the court's instruction one way and then have to put a witness, whose credibility can be attacked, on the stand to do another. I cannot be sure -- I wasn't sure particularly that Mr. Noonan even understood the thrust of those questions. I had a question in my own mind about whether he did. I believe that if he did he was not giving truthful answers. I believe that if he did not he was giving answers which --

THE COURT: All right, let's cut this off.

Mr. Berger, do you have any objection if I tell the jury that it is customary and the usual practice for an attorney not to talk with a witness while he is still under oath?

MR. BERGER: I have no objection to that, your Honor.

THE COURT: All right.

MR. AIDALA: Would you change just one word? Instead of customary, Judge, would you indicate that your Honor did give that instruction?

THE COURT: No, I won't do it because

I didn't do it here.

MR. LOWE: Does your Honor intend to simply say that? I think what that does, basically, is lay it clearly open and I will be personally placed in a position of being attacked for doing something improper. I think that under all of the facts and circumstances which -- I am perfectly happy to take an oath and testify to what went on. Under all the facts and circumstances, I think it is unfair to my client to allow my client's representative, namely, me, to be placed in a position of having my performance and credibility attacked before this jury. I assure you, your Honor, that the summation you will hear, if you give that instruction, will be exactly that.

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THE COURT: Well, if I have any assurance that there will not be --

MR. AIDALA: Mr. Lowe indicated --

THE COURT: We have several avenues to go through here now. I can permit Mr. Lowe to take the stand.

MR. AIDALA: For that limited purpose, Judge.

THE COURT: Well, I know, but I am just asking you now, if you are willing to have me make the statement to them, I am going to make it without making any further reference to that fact itself, because it would be -- if you want to do that, you tell me whether you will or not.

MR. AIDALA: If your Honor mentions that the instruction was also requested and made as early as last week, I would agree to your Honor giving that instruction and not to call Mr. Lowe.

THE COURT: The only other thing I can say is that on previous occasions I have given such instructions to witnesses, but on this particular occasion I simply did not give that instruction.

Is that satisfactory?

MR. LOWE: Your Honor, I can't agree to it because the problem is this --

THE COURT: They are not going to refer to it in any way.

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MR. LOWE: Your Honor, it is in there. Your Honor is going to be telling this jury that what I did was improper. They are never going to forget that. They are never going to know why I did it, and I think that that is totally unfair under these circumstances. Mr. Aidala wants to have his cake and eat it, too. He wants to have an instruction that I did something wrong. He wants me on trial and he doesn't want to give me a chance to explain. It has to be one or the other. Put me on the stand to give an explanation or forget the entire thing -- not half-way.

THE COURT: Well, Mr. Lowe, I recognize your good faith and your desire to do what is right. On the other hand, I think we all are aware that a witness is not to be examined or to discuss with him any of his testimony while he is still on the stand during a recess. I know that you intended, when you did that, to bring out the truth, but perhaps on reflection and hindsight it might have been better to have us all present to indicate that you were going to do that. I am not being critical of you because I think what you have indicated in your explanation is a very logical one, but, on the other hand, I do have that proposition that you do not talk to the witness when he is still under cross-examination, or even direct examination.

That is fundamental, you know that.

MR. LOWE: I do not know that it is fundamental, your Honor.

THE COURT: Well --

MR. LOWE: I do not see it in law anywhere nor in the Canons of Ethics, or anywhere else. It is a request that is often made by defense counsel and granted when made, but I have never seen anything in a case, a statute or any Canon of Ethics or standards relating to the prosecution's function which says it is improper to talk to the witness.

THE COURT: Well, I don't know that I have seen it any place either, but I think it has been observed so universally that I do not think --

MR. LOWE: Your Honor, Mr. Aidala is playing games with your Honor.

THE COURT: Well, there is a lot of that going on.

MR. LOWE: Your Honor, that is not what a trial is for.

THE COURT: I am aware of that.

MR. LOWE: And to allow this jury to be told merely that it is contrary to the customary practice to speak to the witness is in effect telling this jury that

I did something wrong because they know I spoke to the witness. Now they don't know why; they don't know any explanations; they don't know anything else about it, your Honor, and I think under those circumstances to merely instruct them without giving an explanation I think it leaves not just me personally, your Honor, because I dont care about that very much, but I think my client is put in a terribly bad position to have its representative on trial instead of the defendants, and I think that is exactly what Mr. Aidala has been trying to do since this case started, and it is entirely improper, and it is not fair, and it can only be done if Mr. Aidala wishes to bring charges against me, or if he wishes to prove facts before this Court and jury -- the full facts, not just his half, not the half that favors him, but all of it -- that is fair; but to have only the half that favors the defense come out is incredibly prejudicial to the government of the United States in this case.

THE COURT: I certainly cannot couple my instruction, if I were to give it, with the statement that it is the obligation of the government at all times to see that --

MR. LOWE: Your Honor, I think that is in the law, and I think it is in the cases.

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THE COURT: I know, but --

MR. LOWE: And I think that as precedent --

THE COURT: There is a requirement of that, I know that.

MR. LOWE: And I think that if with no precedent, no case, no statute or anything else your Honor is willing to instruct the jury that it is customary practice not to do something when it is -- when there are cases and occasions where the Court has said it is the absolute obligation of the prosecutor to insure that the truth comes out,that I am entitled to have at least that much given in return.

The point is, your Honor, that what your Honor will be telling the jury will leave them with an impression that something happened different from what did happen, and that is not right. That is not furthering the search for the truth, which is what this case is supposed to be about, and I think that is the principal factor that has to be considered. This case is a search for the truth, whether Mr. Rosenberg and Mr. Rodman did certain things. It is not a search to find out whether the United States Government's representative behaved properly, improperly or somewhere in between. Mr. Aidala is using a defense tactic that is much more popular these years

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than it has be in the past, simply because of the disrepute into which the government itself has been thrust in recent years. It is effective, it works, the jury is prepared to accept it like they have never been prepared before in the history of this country, and to allow it to come out in this jury, in this City, without an explanation, is incredibly prejudicial to the government -- not to mention the prejudice to myself personally which, as I said, I really dont care about, because I know what I did and I don't care what Mr. Aidala thinks, but I do care what this jury thinks in this case, and the government -- not me personally but me as their government representative, and to allow Mr. Aidala to place me on trial without giving me an opportunity to explain in some way what happened, I think that is grossly unfair.

MR. AIDALA: Judge, Mr. Lowe said he did not believe his witness --

THE COURT: I have heard enough. I will make no instruction.

Your motion is denied.

Ready? Bring the jury in.

MR. AIDALA: One other thing, Judge.

THE COURT: Yes?

MR. AIDALA: Again all of these things arise --

THE COURT: What is it? Get to the point.

MR. AIDALA: This morning, Judge, this very morning the prosecutor informed me, after what we had been told up to this morning, that he now intends to introduce certain stock certificates which had been represented to this Court, to myself, that the government had no intention of using whatsoever, and I don't know any explanation for it -- I am surprised by it. It is a complete about-face from what he represented to the Court and myself up to this point.

The witness involved in this case is in California. I did not conduct any type of investigation because of the fact that I was told that it was not going to be used.

THE COURT: All they have to do is give you a list of the witnesses. Isn't that all they are required to do? Are they supposed to give you every piece of evidence they are going to introduce?

MR. AIDALA: Judge, on the case law --

THE COURT: Where is the rule?

MR. LOWE: He has it.

THE COURT: Where is the rule that you are required to have this information?

MR. AIDALA: A representation by the government

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to your Honor that they are not going to -- they told us they are not using this. I relied on that. I have not conducted any investigation.

THE COURT: When was the statement made?

MR. LOWE: I made a statement prior to the last trial that I did not know whether I would use these documents or not. There are five certificates which were taken from Mr.Rosenberg when he was arrested.

MR. AIDALA: And if your Honor recalls on the pretrial conference that was my reasons because I would have made a motion to suppress.

THE COURT: All right, what about the motion to suppress?

Just calm it down, Mr. Aidala. We are not going to get anywhere with the volume of your voice.

MR. AIDALA: I am sorry.

THE COURT: As a matter of fact, it irritates the person that listens, and I think it lessens your effectiveness.

MR. AIDALA: I am sorry, Judge, except that I am disturbed by this.

THE COURT: What about the suppression on this?

Mr. Lowe, how do you stand on the motion to suppress? No warrant --

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MR. LOWE: That is not correct -- it was made under a search warrant. These were obtained personally from Mr. Rosenberg upon his arrest, pursuant to an arrest warrant.

THE COURT: In what area are they admissible?

MR. LOWE: Your Honor, I am trying to show --

THE COURT: I know what you are trying to show, but where is the admissibility?

MR. LOWE: Well, he had 5000 in his possession.

THE COURT: Is that an unreasonable search under the Fourth Amendment or not?

MR. LOWE: No, your Honor. I think it was on his person. His person is subject to search, pursuant to an arrest.

THE COURT: For what?

MR. LOWE: Schimel v. California.

THE COURT: I don't think Schimel says that.

MR. LOWE: Schimel defines the permissible area of search, your Honor, and it includes the body of the individual and the clothing that he is wearing.

THE COURT: When are you going to put him on -- after lunch?

MR. LOWE: I can put him on any time, your Honor.

THE COURT: All right, show me the case that indicates

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admissibility.

MR. BERGER: Your Honor, may I be heard?

THE COURT: If he cannot show me a case that showsthey are admissible, that is the end of it, and not only that, it is not a search of your client, and you have no standing to object to it.

MR. BERGER: Well, it is a conspiracy case, your Honor.

THE COURT: Yes, in a conspiracy case, but I do not think you have standing.

MR. BERGER: I am not objecting to illegal seizure, your Honor; I am objecting based on the fact that it is not probative or relevant to the issues in this case, the fact that Mr. Rosenberg may or may not have had 5000 shares of somebody's stock, of Franklin Properties on his person, or 5,000,000 shares.

THE COURT: That may go to the weight of the evidence but not to its admissibility, Mr. Berger.

MR. BERGER: Except for the fact that in the Court's discretion, when you look at the probative value of the evidence and the possible prejudicial effect it could have on the co-defendant, your Honor must make a judgment at that time whether the possible prejudice against Mr. Rodman outweighs any probative value it might have in

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this case.

THE COURT: Well, this is a conspiracy case.

MR. BERGER: Yes, your Honor, but the stock was not found on Mr. Rodman.

THE COURT: Well,in a narcotics case, you find it on one person and not on the others -- sure, it is prejudicial, but it doesn't affect its admissibility.

MR. BERGER: Then I would say it is discretionary, your Honor.

THE COURT: Well, let us see whether or not we are going to get a case indicating that it is admissible. All right?

MR. BERGER: Yes, sir.

MR. AIDALA: And I ask one other thing, your Honor. I think the government intends to call Mr. Nash again -- at least I am assuming that. The last time they brought out on their direct testimony his criminal background. Now I have no intention of going into Mr. Nash's criminal background. To my understanding the only reason to bring that out is to impeach the witness. I assume the government does not intend to impeach its witness, and based on that, on his past conviction, I am going to ask the Court to instruct the prosecutor that he should not bring it out. I think it would only be prejudicial and it

would simply be -- have the effect of trying to show that Mr. Nash knew the defendants, and since Mr. Nash is a convicted individual, that is the type of individual that the defendants are; and there is no reason, if we are not going to use it for impeachment - there is no reason to use it, and therefore the prosecutor shouldn't bring it out.

MR. LOWE: If both defendants' counsel will make the representation that they will not bring out Mr. Nash's criminal record, I certainly will not. I only brought it out --

MR. AIDALA: We make that representation.

MR. BERGER: We make that representation on behalf of the defendant Rodman.

THE COURT: All right.

MR. AIDALA: And the last thing, Judge, because of the witnesses that the government brought in yesterday, and your Honor permitted their testimony over our objection, these are the ones who came in and said they had no stock -- and because that was allowed in I may be asking questions of other witnesses which I would not have been asking but for the fact that your Honor allowed it in, and I just want the record to reflect that fact.

THE COURT: I would always hope that you would be asking questions of other witnesses because of testimony that you do not expect the government to bring in -- I am

glad you told me about that.

All right, are you ready?

MR. LOWE: Your Honor, as long as the jury isn't here and we are covering things, something will come up today --

THE COURT: I am not sure that we are going to get to this case today!

MR. LOWE: I am going to ask that there be a ruling by the Court on this subject, and since you are here it is easier to do it. The government intends to call a witness, Robert Sunshine. Mr. Sunshine, in 1962 or '63 was convicted of a crime of fraud for embezzling clients' funds at a time when he was an attorney. The government's application is that --

THE COURT: What rule -- 609?

MR. LOWE: (After examining) I believe it is, your Honor -- yes -- Federal Rules of Evidence -- Rule 609.

The government would request a ruling that Mr. Sunshine not being examined about his prior conviction -- not only because it is more than ten years old, but I am advised that it has been the subject of a pardon by the Governor of Colorado.

THE COURT: Well, if there is a pardon there is no conviction.

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MR. LOWE: Because, as I understand it --

THE COURT: Isn't that so?

MR. LOWE: I am just bringing the reasons from my application to the attention of the Court.

THE COURT: Do you have a certificate for that?

MR. LOWE: I do not have a certificate of the pardon, your Honor. I did not find out about the pardon until yesterday, but I do know that the conviction is more than ten years old, for which reason it should not be admitted.

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THE COURT: What was the original crime?

MR. LOWE: Embezzlement of clients' funds, your Honor. He was convicted of the crime of embezzlement or fraud, I don't know exactly what they called it, and he was subsequently disbarred as an attorney.

THE COURT: What do you have to say, Mr. Berger?

MR. BERGER: With regard to the parole, of course -- the pardon -- that cannot be used because the document is not here and of course you have to go behind the document. There are certain exceptions to the pardon.

With regard to the conviction of more than 10 years, I don't know if he served a jail sentence or if he was on parole, but the rule reads:

"Under this rule it is not admissible if a period of more than 10 years has lapsed since the date of the release of the witness from confinement imposed for his most recent conviction or the expiration of the period of his parole."

Now, I don't know if his period of parole or his release from prison is more than 10 years.

THE COURT: Do you have that information,

Mr. Lowe?

MR. LOWE: I will have to get it. Excuse me.

THE COURT: Are you going to put him on this morning?

MR. LOWE: I might, your Honor. It is now 11 o'clock, I might, but it is possible.

(Pause.)

MR. LOWE: I withdraw my application. The facts are known now to the defendants because of what I laid on the record already, but I withdraw my application and they are entitled to cross examine him on the facts known.

THE COURT: All right, bring the jury in.

MR. LOWE: At this point I need to find out whether anybody has anything they want to do with Mr. Noonan on the stand as a witness.

THE COURT: Mr. Berger, do you want Mr. Noonan?

MR. BERGER: I never did, your Honor.

THE COURT: Do you want him now?

MR. BERGER: No, sir.

THE COURT: Mr. Aidala?

MR. AIDALA: No, your Honor.

MR. LOWE: I am not going to ask him any more questions.

THE COURT: All right, who is your next witness? Put your next witness on the stand.

MR. LOWE: Are you going to play the tape?

MR. BERGER: I wouldn't want the witness to hear the tape.

THE COURT: Who is the next witness?

MR. LOWE: The next witness is Leon Nash.

THE COURT: All right, bring the jury in.

(Jury present.)

THE COURT: I could almost say good afternoon, couldn't I? Well, we haven't been idle, but there were quite a number of matters that had been left unresolved and had to be argued and if I had known yesterday that it was going to take us this logn to cover them, I certainly would not have had you in here at 9:30. It took a lot longer than we anticipaged and we have all been in court here for at least the past hour.

Now, if you will turn to page 3 of the transcripts and if you will turn to the very bottom,

where it says, "There follows 3 minutes and twenty seconds of unrelated conversation," and the statement of Mr. Rodman, there is an indication in the transcript "inaudible."

Now, the only thing in evidence here is the tape and not the transcript. There may be some possibility of ascertaining what word or words are covered by that "inaudible." I am going to play that to you for two or three occasions and hopefully we won't be disturbed by the disturbance outside. Whatever you determine to be there is what governs.

(Tape played.)

THE COURT: I will reply it.

(Tape played.)

THE COURT: Now will play it again.

(Tape played.)

THE COURT: Let me inform you that when you retire to the jury room you will have available for you a workable machine and the tape itself.

All right, if you pass those back you can call your next witness.

MR. LOWE: The government calls Leon Nash.

L E O N N A S H, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Nash, do you know the defendant in this case, William Rosenberg?

A Yes, I do.

Q Do you see him in the courtroom today?

A Yes.

MR. AIDALA: Identification conceded.

THE COURT: All right, he concedes the identification of the defendant by this witness.

Q How long have you known Mr. Rosenberg, Mr. Nash?

A At least 10, 15 years.

Q During the period of time that you have known Mr. Rosenberg, can you describe in general terms the type of relationship you have had with him?

A More or less as a customer and broker relationship. I purchased stocks from him and sold stocks to him -- through him, his firms and him.

Q That was a business relationship?

A Yes, sir.

Q Do you know the other defendant in this case, Mr. William Rodman?

A Yes, I do, sir.

Q Do you see him in the courtroom?

MR. BERGER: Identification conceded, your Honor.

THE COURT: Very well.

Q How long have you known Mr. Rodman?

A About seven, eight years, sir.

Q Again in general germs, during the seven or eight years that you have known Mr. Rodman, what was the nature of your relationship with him him?

A A broker-customer arrangement, sir.

Q In securities?

A In securities, right.

Q What is your current business?

A I am in mergers, acquisitions and financing.

Q Could you explain to the court and jury what you mean by mergers and acquisitions?

A Sure. Pardon my voice. I am sick.

I put together companies like a marriage broker would take people together, we put companies together to try to make a merger between two comppanies.

Usually one buys the other company and the company that's bought over, it loses identity and it becomes one company.

Q Your business is to introduce companies for that purpose?

A That's right, sir.

Q Do you usually get paid for this?

A Yes, I do.

Q How do you get paid?

A I get paid what they call a finder's fee. It is usually some percentage of cash and stock in the company that we are doing the deal with.

Q Mr. Nash, have you ever had occasion to introduce the defendants in this case, Mr. Rodman and Mr. Rosenberg, to each other?

A Yes, I did, sir.

Q Could you tell us approximately when that occurred?

A The latter part of 1975.

Q How did it come about that you made this introduction?

A Mr. Rodman was looking for a company in the real estate business to make a merger with some people that owned big pieces of property down in Orlando,

Florida. I had him call up Mr. Rosenberg on the telephone and I told him there may be a very good chance of doing something with his company that he is trading for.

Q What company was that?

A Franklin Properties.

Q How did you know at that time, in the latter part of 1975, that Mr. Rosenberg had any knowledge of, interest in, or anything at all to do with Franklin Properties?

A I knew that he was involved for many years before that as trading for the company and being active in trying to make a merger and something.

Q Did you ever own any stock in that company?

A Yes, I did, sir.

Q From whom did you buy it?

A From John Maher Associates.

Q And specifically with whom did you deal when you bought it?

A Either Mr. Rosenberg or somebody in the firm, one of the others.

Q Do you know whether Mr. Rodman and Mr. Rosenberg actually got together?

A I know they got together by telephone, sir.

Q How do you know that?

A I want to know how my situation is going. I spoke to both of them to find out how the chances are going of making a merger.

Q Did there come a time when you received something from Mr. Rosenberg to give to Mr. Rodman?

A Yes, sir.

Q What was it that you received?

A We call it a due diligence file. It consists of things about the company, statements on the company, the net worth of the company, the valuation of their properties so that they can make a determination for the two companies to get together.

Q What did you do with the file?

A I gave it Mr. Bill Rodman.

Q Who, if anyone, asked you to do that?

A Mr. Rodman asked me for these papers because his people wanted to take a look at the company.

MR. LOWE: I have no further questions.

THE COURT: Mr. Berger?

CROSS EXAMINATION

BY MR. BERGER:

Q Mr. Nash, my name is Mr. Berger and I repre-

sent Mr. Rodman.

You testified that you gave Mr. Rodman a due diligence file on Franklin Properties, is that correct?

A That's right, sir.

Q In any merger between two companies would the attorneys or the principals go into a merger or discuss the merger without a due diligence file?

A No, sir.

Q As a matter of fact, if a merger were to go through and one of the companies were a public company, wouldn't the SEC require that a due diligence file be delivered?

A Yes. To make the stockholders happy, right.

Q So that when Mr. Rodman asked you for a due diligence file he was doing what was ordinary and customary, is that correct?

A Yes, sir.

Q And he was doing it just as the name applies, due diligence?

A Right, sir.

Q In November of 1975 was Mr. Rodman to your knowledge a trader in securities?

A No, sir.

Q Was he a stockbroker in November of 1975?

A No, sir.

Q Mr. Rodman never told you that he was interested in inflating the price of Franklin Properties' stock, did he?

A No, sir.

Q He never told you that he was interested in selling the stock or having somebody sell the stock to the public for him, did he?

A No, sir.

Q Did he ever show any interest to you in Franklin Properties' stock for any reason other than for the purposes of a merger?

A No, sir.

Q Did Mr. Rosenberg ever tell you that Mr. Rodman had any interest in that stock?

A No, sir.

Q Did he ever tell you that Mr. Rodman asked him to do anything with that stock for any purpose whatsoever?

A He never told me that.

MR. BERGER: I have no further questions.

MR. LOWE: I didn't hear the answer.

THE WITNESS: No, he never told me that.

MR. AIDALA: No questions.

THE COURT: Any redirect?

MR. LOWE: Yes

REDIRECT EXAMINATION

BY MR. LOWE:

Q Prior to 1975 was Mr. Rodman in the stock brokerage business?

MR. BERGER: Objection, your Honor. Irrelevancy.

THE COURT: No, I will permit it.

Q Prior to 1975 to your knowledge was Mr. Rodman in the stockbroker business?

A Yes, he was.

MR. LOWE: Nothing further.

RECROSS EXAMINATION

BY MR. BERGER:

Q Mr. Nash, what was the last date that you know of as a fact from your personal knowledge that Mr.Rodman was in the brokerage business?

A Somewhere around '74,or '73 or '74, I think.

Q Are you sure it was '74?

A I am not sure, but I know for a while he

has been out of the business. I know he has been out of the securities business. He has been in different businesses.

Q When was the last year that you had any dealings with him as your customer's man or trader?

A Geez, I can't really remember. It was a few years ago. I can't give you the exact date.

MR. BERGER: Thank you. No further questions.

THE COURT: Anything further?

MR. LOWE: No.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Call your next witness.

MR. LOWE: The government calls Joel Marcus.

J O E L E L L I O T M A R C U S, called as a witness by the government, being first duly affirmed, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Marcus, by whom are you employed?

A Helfer, Broughton, Inc.

Q What is the business of Helfer, Broughton?

A We are primarily over-the-counter stock traders and dealers.

Q In what capacity are you employed?

A I am the head of the over-the-counter trader department.

Q What does this term "over-the-counter" mean in the securities business?

A It would mean that you are making a market in a particular stock which for reasons of failing to meet the listing requires or small capitalization is not listed or traded on any of the nationally-recognized stock exchanges and by making a market we would mean having a continuous bid and offer in the stock and being prepared to buy and sell stock at all times for our own account with other broker-dealers who call you to do a transaction in that stock.

Q Is there anyone else employed in the trading of securities for Helfer, Broughton with the same first name as yours?

A No, sir.

Q Did there come a time when you as the trader at Helfer, Broughton began making a market in the stock known as Franklin Properties, Inc.?

A Yes.

Q Approximately when was it that you commenced making a market in that stock?

A To the best of my recollection, it was early September of 1975.

THE COURT: Tell us what making a market means.

THE WITNESS: Well, making a market, sir, means that you advertise your name in a publication known as the pink sheets, which is put out by the National Quotation Bureau, and by advertising your name this means that you are actively prepared to purchase and sell the stock at a price that you would give out over the telephone when another firm calls you on the phone.

If you would like an example, let's just say Bache & Company would call me and say, "What's your market in Alerac Corp.?" which is a stock we happen to trade, and I would say, "1-7/8ths bid, offered at 2-3/8ths." And they would respond, "1000 for sale, 500 for sale or 2-3/8ths bid, 500," and at that point I am obligated to sell Bache & Company or buy from them at least a round lot, which would be comprised of 100 shares, or buy the whole 500 or sell the whole 500, if I was inclined to do that, or bargain with them to buy

it at a lower price or sell it at a higher price.

Q You used the term "bid and offered at." Could you tell us what those terms mean?

A Well, my bid in a stock would be the price that I am prepared -- that I must by the rules and regulations of the National Association of Securities Dealers buy stock from a broker who inquires of me as to the price of that stock. That's the bid.

The offering would be the price which, under these regulations, I must be prepared to sell the stock to another broker-dealer who inquires of me of the price.

Q Do you know William Rosenberg?

A I do not know him personally. I have spoken to him on the phone on numerous occasions.

Q Where have you spoken to him?

A When I would call John Maher & Associates for a market in a stock.

Q What do you know him as?

A When I would call, you know, he would be Bill or Billy, and he, as far as I know, is an over-the-counter trader employed by John Maher Associates.

Q Have you called John Maher Associates and had occasion to ask for Bill?

A Yes, sir.

Q And is the person who answers the phone the person you know as William Rosenberg?

A Yes.

Q Whom you know by voice only?

A By voice only, yes, sir.

Q Did you have occasion to speak to this William Rosenberg about the stock Franklin Properties?

A Yes.

Q Would you tell us when the first such occasion was?

A The first such occasion was shortly after I went into the pink sheets on Franklin Properties and he called me and he bid me eigher 3/8ths of a dollar or a half a dollar for an amount of stock. To the best of my recollection, it was 5000 shares.

Q And that would be approximately September of '75?

A Yes, sir. That would be shortly after I went into the pink sheets on the stock.

Q Thereafter did your firm advertise its name in the pink sheets as being willing to buy and sell Franklin Properties?

A Yes, sir.

A Yes, sir.

Q Did it advertise in the pink sheets prices, that is, bid and offering prices, for that stock?

A Not at first, but there came a time when we did advertise the price.

Q When you first started listing prices, what prices did you list?

A I listed 1/8th bid,or 12-1/2 cents a share, offered at 5/8ths bid, or 62-1/2 cents per share,

Q To tie our language into an example that's immediately relevant, does that mean that you were willing to buy the stock for 12-1/2 cents and to sell it for 62-1/2 cents?

A Yes, sir.

Q Did there come a time when you had a conversation with William Rosenberg about the prices your firm was quoting in the pink sheets?

A Yes.

Q When did that happen?

A That happened, to the best of my recollection, late september or early October of 1975.

Q What was that conversation?

A Well, the conversation was that Billy told me --

MR. BERGER: Objection, your Honor. A limiting instruction is requested at this time.

THE COURT: All right. Members of the jury, this is a charge solely of conspiracy. I will later define for you all of the elements of the conspiracy. If you should find beyond a reasonable doubt under the proof established that a conspiracy existed, and in this case the only claimed co-conspirators are the defendants on trial, if you find that in fact a conspiracy did exist between these two defendants, then any statement made by any other member, and in this cash by each other, in furtherance of the conspiracy is admissible against both defendants.

On the other hand, if you should find that no conspiracy exists, then the statements are not attributable one to the other and we are taking, therefore, this testimony on a conditional basis, subject to connection, subject to whether or not it is connected upand in fact if you should find that a conspiracy exists.

Is that satisfactory, Mr. Berger?

MR. BERGER: Yes, your Honor.

THE COURT: Very well.

Q What was the conversation between yourself

and William Rosenberg about the price that your firm was advertising for Franklin Properties in the pink sheets?

A He said that the price I was advertising in the pink sheets was hurting him. I believe almost a direct quote would be that "That price is killing me." To the best of my recollection, that would be almost a direct quote. And that he did expect that there would be buyers in the stock at $1 and that they would not buy the stock or they could not buy the stock at $1 while I was printing a quote in the pink sheets of 1/8th bid, offered at 5/8ths.

Q Thereafter what action, if any, did you take with regard to your advertisement in the pink sheets relating to Franklin Properties?

A After a little while I ceased printing the price in the pink sheets.

Q Did you continue to advertise the name of your firm in the pink sheets?

A Yes. We were submitting a card to the National Quotation Bureau on the stock, but we were just submitting our name without a price.

Q Did there come a time when you had a conversation with William Rosenberg relating to your

desire or your firm's desire to sell the stock of Franklin Properties?

A I continuously told Mr. Rosenberg, or Billy, as I knew him, when I had the stock, that I am long the stock and that I would like to see, you know, a buyer or any kind of buy order, would sell stock to him if he had a buy order, to flatten out my position in the stock or get rid of the shares that I had.

Q What, if anything, did Mr. Rosenberg say to you on those occasions?

MR. AIDALA: Judge, may I ask that we pinpoint when we are talking about, what time?

THE COURT: Establish the time.

Q To the best of your recollection, when did these conversations take place?

A I would say they took place in October and November of 1975.

Q Could you tell us what Mr. Rosenberg said to you about your desire to sell the stock?

A Mr. Rosenberg told me continuously that there would be buyers at a dollar and that if I would be patient and hold the stock, that I would eventuallty lose stock at a dollar when buyers came into the market to buy the stock.

MR. LOVE: I have no further questions.

CROSS EXAMINATION

BY MR. AIDALA:

Q Mr. Marcus, is it not a fact that the business that you are in is a competitive business of sorts?

A Yes.

Q And, as a matter of fact, you compete against other brokers who handle the same stocks you do?

A Yes, sir.

Q Would I be correct in stating that when someone wants to buy a stock through their brokerage house, that brokerage house contacts a number of brokers who may have it to sell, is that correct?

A To the best of my knowledge, an order clerk is required to contact three brokerage houses -- I believe that's an NASD regulation -- or as many brokerage houses as are in the sheets, if there are under three brokerage houses in the sheets -- before they execute an order for a customer.

Q So at least three minimum?

A Well, if there are three brokerage houses advertising in the pink sheets.

Q And the purpose for that is to shop around

to see the best price you can get it at, is that right?

A Yes, sir.

Q If you are selling a particular stock at a cheaper price than, say, John Maher was selling it, then you would receive the order, is that correct?

A Yes, that's correct.

Q Now, by the way, do you know how many millions of shares of Franklin Properties are outstanding?

A No.

Q By the way, is it not a fact that it is common practice amongs brokers who deal in certain stocks to speak to each other, just like you and Mr. Rosenberg spoke to each other?

A Yes.

Q And to discuss the possibilities of that stock rising in price; that's a normal thing that does happen, isn't that right?

A Yes.

Q As a matter of fact, in or about October of 1975, do you recall Mr. Rosenberg telling you that Franklin Properties was attempting to acquire different properties in different places of the United States?

A I don't recall that conversation specifically,

no, sir.

Q Do you recall at any time him mentioning to you about Franklin Properties going to or intending to or trying to buy condominiums in Florida?

A No, I do not recall that.

Q Do you recall him telling you about their plans to almost buy a ghost town out West, to buy an entire town?

A No, I don't recall that.

Q Do you recall him indicating to you, in words and substance, that he hoped, by virtue of Franklin's business, that the stock would get up in price as opposed to going down in price?

A He seemed to feel that eventually there would be buyers at a dollar.

Q Mr. Marcus, I ask you one question: were you at any time a conspirator of Mr. Rosenberg?

A No.

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Q Did you conspire with him in a scheme or plan to keep the price of Franklin Properties stock up?

MR. LOWE: I will object to that. It calls for a legal conclusion.

THE COURT: Yes, sustained.

Q Did you at any time agree with Mr. Rosenberg that you would be part of any manipulation to falsely raise the price of Franklin?

A No.

MR. AIDALA: Thank you, Mr.Marcus. That is all.

CROSS EXAMINATION

BY MR. BERGER:

Q Mr. Marcus, my name is Mr. Berger. I represent Mr. Rodman.

You testified that you were the head of the over-the-counter trading department of Helfer, Broughton, Inc.?

A Yes.

Q And as such with regard to any securities that that firm is dealing in in the over-the-counter market, do you keep a due-diligence file?

A Yes, sir.

Q And do you have a due diligence file on Franklin Properties?

A Yes.

Q And does that due diligence file show you the number of shares of Franklin Properties issued and outstanding?

A The due diligence file would contain that, yes.

Q And when you testified that you did not know how many shares were issued and outstanding you really did not recall or you did not know?

THE WITNESS: (To the Court) Should I give an answer on that?

A I am sorry, sir, our firm maintains markets in approximately 200 over-the-counter stocks.

When we get in the due diligence, I look at it to be sure there is a balance sheet and to see that there is an address and a phone number, and to know something about what business the company is in.

I do not thoroughly examine every due diligence, nor do I know or recall the number of shares outstanding in Franklin Properties or any of the other stocks that we might trade during the course of the year.

Q But that information was available to you in your due diligence file, is that correct?

A I assume it was -- I know I read it. I don't recall what I read but I assume it was, sir.

Q You testified that you sold approximately 5000 shares to John Maher?

A I did not testify to that, sir. I testified that Billy at John Maher bid me for 5000 shares. At the time I did not have any shares to sell him, so I did not sell him any shares at that time.

Q Did there come a time on September 3 of 1975 when you sold 100 shares to John Maher?

A Yes, I did.

Q And what price did you sell that 100 shares at?

A I believe it was th ee-quarters.

Q Could it have been seven-eighths?

A It might have been, sir. I don't recall at the moment -- three-quarters or seven-eighths, I don't recall.

Q So that in September John Maher purchased 100 shares of Franklin Properties stock from you at either three-quarters or seven-eighths; is that correct?

A Yes.

Q Do you know how many shares of Franklin Properties stock you sold to John Maher in the months of September and October?

A I don't recall right now, sir, no.

Q Did you show those records to the U.S. Attorney?

A Mr. Lowe requested that I send him his schedule

of my trades in the stock, which I did.

Q Do you recall the highest price paid by John Maher Associates?

A I don't recall offhand. I would recall if I saw the sheet again. I don't recall right now.

Q In September of 1975 how many shares of Franklin Properties did your firm own?

A I would have to see the trading sheet that I submitted to Mr. Lowe, and from that I could make a determination.

It might have fluctuated during September; it might have remained constant, and honestly, sitting here right now, I don't recall. We run positions in about 200 stocks. We trade about 500 stocks during the course of the year, picking up some, dropping some. I am in no position to tell you what our particular position was in a security in 1975 without seeing any record in front of me.

Q In the past two weeks has Mr Lowe asked you the same question: how many shares of Franklin Properties did you own in September, 1975?

A I don't recall Mr. Lowe asking me that specifically. He might have, but that information would be available to him from the trading schedule that I submitted to him.

Q Do you know the most number of Franklin Properties

stock you owned in September of 1975?

A I don't recall it offhand, no.

Q Well, can you give me a ballpark figure?

MR. LOWE: I don't want a ballpark figure.

THE COURT: Yes, sustained.

MR. LOWE: He has --

THE COURT: Yes, sustained.

Q Would you say that in relationship to the other stocks owned by the firm it was a substantial number?

THE COURT: Would your recollection be refreshed if you saw the records?

THE WITNESS: Oh, I would like to see them, yes. I could give a much better answer.

MR. BERGER: Your Honor, if I had the records I could show them to him.

MR. LOWE: Well, they have been provided to you, but I think I have a copy here.

Government's Exhibit 3505-A, which was previously supplied to both counsel (handing to Mr. Berger).

Q I show you Government's Exhibit 3505-A and I ask you if this helps to refresh your recollection (handing)?

A (After examining) It would except for the fact that I have the dates in this column (indicating), and

the dates are amudged and illegible. The amounts help and the prices help but the dates don't help.

(Mr. Berger hands to the witness.)

A That is much better.

(After examining) Yes.

THE COURT: What is the question?

Q Does it refresh your recollection?

A Oh, sure. I made this up myself.

Well, if you are going to ask me questions on it, I would like to use it.

Q I would like you to use it to refresh your recollection.

MR. LOWE: I have no objection to putting it into evidence.

MR. BERGER: Fine. I have no objection to it going into evidence.

THE COURT: Mr. Aidala?

MR. AIDALA: May I see it, please?

(Mr. Berger hands to Mr. Aidala.)

MR. AIDALA: No objection.

MR. LOWE: Perhaps to eliminate confusion we should have it remarked as a defendants' exhibit.

THE COURT: Defendant Rodman Exhibit A in evidence.

MR. BERGER: Yes.

(Document marked Defendant Rodman's Exhibit A in evidence.)

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BY MR. BERGER:

Q I hand you this (handing).

A Oh, thank you.

Q At the end of September, 1975, what was your long position in Franklin Properties?

A Okay -- excuse me while I look at this here.

(After examining) Long, 1200 shares.

Q At the end of October what was your long position?

A The same -- long, 1200 shares.

Q At the end of November, what was your long position?

A Long, 1400 shares.

THE COURT: Would you tell the jury what "long" means?

THE WITNESS: Okay. "Long" means that you own a particular stock in the inventory of the firm, in the trading account of the firm. In other words, let us just say on a particular day, on XYZ Corporation you came in that day without a position. Let us say you bought 700 and sold 400.

At the end of the day you would have a long position of 300 shares of stock of the XYZ Corporation.

Q Can you tell from that document how many shares of Franklin Properties you sold in the month of September to John Maher?

A In the month of September I sold John Maher 100 shares of stock.

Q At what price?

A 7/8 of a dollar or 87-1/2 cents a share.

Q Did John Maher have an interest in any of the shares owned by your employer?

A Well, at various times I would call Billy, and I would say, "Billy" -- you know -- "what is your bid?" -- and he would give me a bid, and I would indicate an interest in selling some at a certain price, and he kept telling me that the stock, you know, I would eventually sell the stock at a dollar. He did not seem to have too much of an interest in buying the stock that I had.

Q He did not seem to want to accumulate your stock?

A No.

Q Did he own any of the stock in Franklin Properties that you had listed as owned by your employer? Was any of that stock actually John Maher's stock?

A No, not whatsoever.

Q Was any of that stock Billy Rosenberg's stock?

A No.

Q And when Mr. Rosenberg said to you, "Hold the stock; I think you will be able to get a dollar for it" -- is that what he said?

A In -- yes.

Q How much were you supposed to kick back to Mr. Rosenberg when you got that dollar, Mr. Marcus?

A Absolutely nothing.

Q You weren't supposed to give him 50 cents a share when you sold it?

A No.

Q You were going to keep the whole dollar?

A If I sold it at a dollar, of course.

Q How much did you pay for that stock?

A (After examining) I see I bought three-eighths for some, and a quarter for some.

Q You hoped to sell it for a dollar?

A If somebody came into the marketplace to buy it at a dollar, if another brokerage firm bid me a dollar, of course I would sell it at a dollar.

Q Without kicking back to Mr. Rosenberg?

A Of course not.

Q Maybe you would kick back to Mr. Rodman.

MR. LOWE: Your Honor, that is an argumentative question.

THE COURT: Objection sustained.

Q Were you going to kick back to Mr. Rodman?

THE WITNESS: Shall I answer the question?

THE COURT: Yes.

A Of course not.

Q You were to keep that dollar for your firm -- your firm was to keep it, is that correct?

A Right. It would have been a trading profit and the money would have belonged to my firm.

Q Now, when you remained in the pink sheets but ceased putting in a bid and an offer, did Mr. Rosenberg promise you anything for doing that?

A No.

Q Did he offer you any money?

A No.

Q Did he threaten you?

A No.

Q You also testified that certain over-the-counter securities are traded over-the-counter because they cannot be listed on a common exchange, is that correct?

A Well, I did not mean that in a pejorative

sense. I meant they are smaller companies who would not meet the listing requirements of an exchange. I believe the New York and American Stock Exchange set certain minimum requirements in terms of assets of the company, earnings and sales, and these are smaller companies who could not meet those requirements, so there are some very large companies traded over-the-counter who simply do not want to be bothered with the hassle of filing requirements with the Stock Exchange.

Q Even though they meet the requirements?

A Yes, such as Pabst, Annhauser-Busch, and I believe Tampax.

MR. BERGER: Thank you. No further questions.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MP. LOWE:

Q With regard to Franklin Properties the knowledge that you got by reading the due diligence file on that particular stock, could that have met the requirements for the listing?

MR. AIDALA: Objection.

A No, sir.

MR. LOWE: I have nothing further.

THE COURT: All right, you may step down.

THE WITNESS: Thank you.

(Witness excused.)

MR. LOWE: The government calls Rose Lamattina.

R O S E L A M A T T I N A, called as a witness by the government, being first duly sworn, testified as follows:

MR. LOWE: Your Honor, I hate to do this, but I seem to have misplaced one piece of paper that this witness has something to do with.

THE COURT: All right, take your time.

(Mr. Lowe examines.)

MR. LOWE: Your Honor, at this time I ask that this particular witness be excused, subject to recall.

THE COURT: Why don't we take a 10-minute recess and then we will be back.

(Recess.)

(In the robing room.)

MR. AIDALA: Do we need the defendants?

THE COURT: No, I would like to talk about scheduling for the rest of the day.

MR. LOWE: I became aware yesterday of the existence of some evidence which may become important to the government. The evidence has just this morning come into our possession at approximately 10:30. I have not had an opportunity obviously to allow defense counsel to see it, nor have I had a real opportunity to digest it myself.

THE COURT: How long would the balance of your case take without that?

MR. LOWE: We are going to finish, your Honor, I am reasonably certain.

THE COURT: About when?

MR. LOWE: Some time this afternoon.

THE COURT: Early, late?

MR. LOWE: It's hard to say, because one witness may be cross examined quite extensively.

THE COURT: Do you want to rest today, is that what you mean?

MR. LOWE: No, that's not what I am saying. I don't want to put the witness on before lunch because

I want to be able to go over this evidence that I have discovered and also give defense counsel an opportunity to do so. I should say this. It probably relates very little to Mr. Rodman, it is mostly related to Mr. Rosenberg.

THE COURT: If it relates to one, it relates to the other. Otherwise it doesn't relate to either one of them.

MR. LOWE: I am only saying that for the interests of defense counsel and what they might want to do I don't know whether or not I will be able to finish -- I mean, to continue until 1 o'clock without putting this witness on.

THE COURT: I wasn't going to go beyond 12:45 anyway, but if you run short, then you tell me and we will adjourn early.

MR. LOWE: The only other witness -- if I have witnesses we will just keep them coming, but the only other one would be Mr. Doonan, about which I have a few cases, but I have them on the table.

THE COURT: You tell me when you get to the point and then we will adjourn.

MR. LOWE: Thank you.

THE COURT: I am now looking at United

States vs. Robinson, 414 U.S. 218, which I have not read but which my law clerk indicates to me verbally may permit the introduction of those stock certificates.

MR. LOWE: I believe it is pretty solid, your Honor.

THE COURT: All right, let's go.

(In open court; jury present.)

DIRECT EXAMINATION

BY MR. LOWE:

Q Miss Lamattina, by whom are you employed?

A United States Attorney's office.

Q What is your job?

A I work in the mail and records division.

Q How long have you been employed there?

A It will be four years.

Q Showing you what's been marked Government's Exhibit 12 for identification, can you identify that?

A Yes, I wrote this.

Q Can you explain, first of all, whether that envelope has been in your possession before?

A Not until I received it. Not until I wrote it.

Q When did you do that?

A A couple of weeks ago. I am not sure.

Q How did it come into your possession?

A The U. S. Post Office.

Q They delivered it to you?

A Right.

Q Can you tell us in what condition it was when it was delivered to you?

A I think I had to slice it open.

A It was sealed when you got it?

A Sealed. It was a return.

Q Is there any writing on it that was not on it when you got it?

A No. Just like this appeared. I put my name on it once I opened it.

Q The writing of my last name, it was not on it when you got it?

A No. Just this (indicating).

Q You opened it?

A Yes. We open up the mail.

Q Did you staple it closed?

A I stapled it closed.

Q And you wrote my name on it --

A "Mr. Lowe."

Q -- to send it to me?

A Right.

MR. LOWE: I have no further questions.

THE COURT: No question.

MR. AIDALA: There is no offer, Judge.

THE COURT: I know. Are there any questions of this witness?

MR. BERGER: No.

MR. AIDALA: Just one.

CROSS EXAMINATION

BY MR. AIDALA:

Q When did you mail that letter?

A I didn't mail it.

Q So you don't know when it was mailed?

A This comes into your office as a return.

Q You didn't send it out from your office, though?

A No.

THE COURT: All right, you may step down.

(Witness excused.)

MR. LOWE: The government calls Charles Marcus.

C H A R L E S M A R C U S, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Marcus, are you known by any other name?

A Yes, sir.

Q What other name are you known by?

A Harry Liederman.

Q Mr. Marcus, what is your business?

A I am a check casher.

Q Can you explain for the jury what a check casher does?

A Yes. A person gives me a check and I give him the cash less my fee.

Q You cash checks for people, is that right?

A Yes, sir.

Q Do you know Mr. William Rosenberg?

A Yes, sir.

Q Do you see him in the courtroom here today?

A Yes, sir.

Q Would you point him out for the record, please.

MR. AIDALA: The identification is conceded, your Honor.

THE COURT: Very well.

Q Have you ever had occasion to cash checks for Mr. Rosenberg?

A Yes, sir.

Q When did you first meet Mr. Rosenberg?

A I would say approximately within the last two years.

Q How did you come to meet him?

A Mr. Leon Nash introduced me to him.

Q When, if you recall, did you first begin to cash checks for Mr. Rosenberg?

MR. BERGER: Objection, your Honor. No proper predicate.

THE COURT: No, I will permit it.

No, he says he has cashed checks for Mr. Rosenberg.

Didn't you say you cashed checks for Mr. Rosenberg? Have you said you cashed checks for Mr. Rosenberg?

THE WITNESS: Yes, sir.

THE COURT: You have. When did you first start doing it?

THE WITNESS: It would be shortly after the time that Nash introduced me to him.

Q Do you recall, Mr. Marcus, what kind of checks they were that you cashed for Mr. Rosenberg?

A Yes, sir.

Q Would you tell us what kind they were?

A All the checks were -- the maker of the checks was John --

MR. AIDALA: I object unless there is a date set. I mean, if this is way beyond the scope of the indictment, it would be immaterial.

THE COURT: Yes, I think you should confine it to the period of time that's involved.

MR. LOWE: Your Honor, there is a lengthy period of time and it is -- perhaps if I might let your Honor peruse Government's Exhibits 8A and 9A for identification.

THE COURT: On Government's Exhibit 8A I have no difficulty.

Perhaps later on 9A we can discuss that further.

MR. LOWE: I will, your Honor. Thank you.

Q You were about to tell us, Mr. Leiderman, who the maker of the checks who were brought to you

by Mr. Rosenberg was.

MR. AIDALA: Judge, again I object. He has to indicate what time period is he talking about. Is he talking of the time period in the indictment or --

THE COURT: Well?

Q You met Mr. Rosenberg, you said, approximately two years ago?

A Correct, sir.

Q And you said you first started to cash checks for him shortly after you met h i m, is that right?

A Correct, sir.

Q During that perod of time up until December of 1975 did you from time to time cash checks for Mr. Rosenberg?

A Yes, sir.

MR. BERGER: Objection, your Honor. At this time I would request a limiting instruction.

THE COURT: All right, it's ta'en subject to connection.

MR. BERGER: Thank you.

THE COURT: It's the same as I have indicated to you before about this testimony insofar as

defendant Rodman is concerned, it's being taken subject to connection.

All right.

Q During that period of time did Mr. Rosenberg bring you checks made by a single maker --

MR. AIDALA: Objection, Judge. That period of time. He is talking about two years ago and I object.

THE COURT: That's correct. Up until December, '75, that's right.

Q During that period of time did Mr. Rosenberg bring you checks make by a single maker or different checks?

A All of the same maker.

Q Who was the maker of the checks?

MR. AIDALA: Judge, I object to any testimony concerning time which is two years prior to the time of the indictment.

THE COURT: No. Overruled.

Q You may answer, Mr. Marcus. Who was the maker of those checks?

A John J. Maher Associates.

Q Were the checks made payable to Mr. Rosenberg?

A No, sir.

Q Mr. Marcus, did anyone else other than Mr. Rosenberg bring you checks drawn on or made by John Maher Associates to cash?

A No, sir.

Q Directing your attention to Government's Exhibit 8A for identification, which is before you, I ask you to look at each of those.

Can you tell us, Mr. Marcus, whether you cashed any of those checks?

A Yes, sir.

Q How many of them did you cash?

A All of them.

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Q For whom did you cash them?

A Mr. Rosenberg.

Q And to whom did you give the cash?

A Mr. Rosenberg.

Q Did you give him for each of those checks the amount of cash equal to the face amount of the check?

A No, sir.

Q Did you charge him some money for the service?

A Yes, sir.

Q How much?

A 2 per cent.

MR. LOWE: Your Honor, my plan was to display the other exhibit to the witness.

THE COURT: Yes -- and you are going to ask him some questions with reference to this?

MR. LOWE: Yes.

MR. AIDALA: May I have the same objection for the record?

THE COURT: Yes, I will permit this preliminary step, subject to being straightened out.

(Mr. Lowe hands to the witness.)

Q Mr. Marcus --

THE COURT: And again it is taken subject to connection so far as the defendant Rodman is concerned.

Q Mr. Marcus --

MR. BERGER: Yes, your Honor, and in addition, relevancy and materiality.

THE COURT: Yes, I said that -- on relevancy we will determine whether or not it is relevant. If not, I will strike it. If it is relevant, then we will permit it.

Q Mr. Marcus, you have before you Government's Exhibit 9-A for identification. Have you had an opportunity to look at each of those?

A Yes, sir.

Q Can you tell us whether or not you cashed any of those checks?

A Yes, sir.

Q How many, if any?

A All of them.

Q For whom did you cash them?

A Mr. Rosenberg.

Q To whom did you give the cash proceeds?

A Mr. Rosenberg.

Q And for those particular checks did you also take a 2 per cent fee?

A Yes, sir.

MR.LOWE: If I may have just a moment, your Honor.

THE COURT: Certainly.

(Mr. Lowe examines.)

MR. LOWE: Before I indicate "No further questions," may we approach the bench, your Honor?

THE COURT: Yes.

(The following took place at the side bar.)

MR. LOWE: This witness has a criminao conviction for income tax evasion, I believe in '66, '67, '68 -- whatever -- which would clearly be admissible as impeachment evidence.

Does the defense desire to bring out that subject?

MR. AIDALA: No, your Honor.

MR. BERGER: No, your Honor.

THE COURT: All right.

(In open court.)

BY MR. LOWE:

Q Mr. Marcus, directing your attention again to Government's Exhibits 8-A and 9-A for identification, is there any distinguishing mark of any kind on those documents by which you can tell that you did cash them?

A Yes, sir.

Q Would you tell us what the distinguishing marks are?

MR. AIDALA: Just a minute --

A The endorsements --

THE COURT: Wait a minute. The records are not in evidence. On the other hand, if you are going to raise a question as to this, why, I will permit Mr. Lowe to do this.

I am not asking for a concession for the jury.

MR. AIDALA: I thought he asked him whether there is something and he answered, "Yes, there is something," and indicated that. That is fine.

THE COURT: All right, you are satisfied with that.

MR. LOWE: For another reason I need to know what it is.

THE COURT: All right, I will permit it.

Q Would you tell the Court and jury, Mr. Marcus, what the distinguishing mark or marks are that enable you to know that you cashed those checks?

A By the endorsements.

Q Are the endorsements the same on each?

A Well, when I say the endorsements, they all went through my accounts.

Q And you recognize those endorsements as being your accounts?

A Correct, sir.

MR. LOWE: I have no further questions of this witness.

THE COURT: Mr. Berger?

CROSS EXAMINATION

BY MR. BERGER:

Q Mr. Marcus, did Mr. Rosenberg buy anything from you with those checks?

A No, sir.

Q He did not tell you that it is his money, did he?

A Pardon me, sir?

Q Did he say to you that, "This is my money"?

A I never had much conversation. I gave him the money -- period. That was the end of it.

Q Is it unusual for people to come in and have checks cashed?

A Unusual?

Q Yes.

A No.

Q About how many checks do you cash a week, Mr. Marcus?

A If I am busy it's a lot. If not, it's a few. I don't keep track.

Q Do you ever cash checks for government employees?

A No, no, sir.

Q Why not?

A I don't think they know about my service. I deal mostly, counsellor, in the jewelry trade -- excuse me -- most of my customers are jewelry people, sir, or recommendations, like Nash would recommend somebody or somebody else.

Off the street I never gave -- cash a check for anybody. Unless they are recommended or I know the party I wouldn't cash a check for anybody.

Q Let us say if a government employee came in with proper identification --

A For no money.

Q -- you wouldn't cash it?

A If he gave me the whole check, I wouldn't do it.

Q Is there anything wrong in your cashing checks?

A Nothing wrong. It may be a forgery. I don't want to be involved in no forgery. I have to know the person who I am cashing it for, counsellor.

Q But if you knew an employee of the government, Mr. Marcus, you knew him, and he was a friend of yours and he asked you to cash a government check for him, would you do it?

A Sure, if I knew the guy, why not?

MR. BERGER: No further questions.

MR. AIDALA: No questions.

THE COURT: Any redirect.

MR. LOWE: None, your Honor.

THE COURT: You may step down.

THE WITNESS: Thank you.

(Witness excused.)

MR. LOWE: The government calls Adam Ritter.

A D A M R I T T E R, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Ritter, where do you live?

A 58-40 77th Place, Elmhurst, New York.

Q Mr. Ritter, do you have a brokerage account at a brokerage firm of John R. Maher Associates, Inc.?

A No, I have not.

Q Have you ever purchased any stock through that firm?

A Yes, I have.

Q Have you ever purchased the stock of Franklin Properties?

A No, I have not.

Q Have you ever received any certificates for

shares of stock of Franklin Properties?

A No, I have not.

Q What, if any, transactions did you have with the brokerage firm of John R. Maher Associates?

A I sold some of my stock through him, or through his firm and bought other shares of stock.

Q What stock did you sell?

A I sold 1500 shares of Chock Full O'Nuts stock.

Q What stock did you buy?

A I sold -- I bought 2000 shares of Living & Learning stock.

MR. LOWE: I have no further questions.

THE COURT: Mr. Barger?

MR. BERGER: I have no questions, your Honor.

THE COURT: Mr. Aidala?

MR. AIDALA: Excuse me, may I have one moment, your Honor?

THE COURT: Yes.

(Mr. Aidala confers.)

MR. AIDALA: Just simply the same objections that we had with other witnesses.

THE COURT: All right, the same ruling.

You may step down.

MR. LOWE: The government calls Nicholas Shaheen.

THE WITNESS: Am I dismissed, sir?

THE COURT: Yes, you are.

(Witness excused.)

N I C H O L A S S H A H E E N, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Shaheen, where do you reside?

A In Boston, sir.

Q What is your address in Boston?

A 153 Warren Avenue, sir.

Q Mr. Shaheen, will you try to speak a little more slowly?

A I am sorry.

Q Because everyone has to hear you, and the gentleman in front of you is making a record of it.

A Okay.

Q What is your business address?

A 52 Clarendon Street, Boston, Mass.

Q Did you have a brokerage account at the firm of John R. Maher Associates, Inc.?

A I can't answer that because I don't understand the question. You mean do I do business with them?

Is that what you mean?

Q Yes.

A I have, yes.

Q And is the business that you do the buying and selling of stock?

A No, I just buy stock for myself -- is that what you mean? I don't understand the question.

THE COURT: Do you buy stocks through them?

THE WITNESS: I have -- I had.

THE COURT: And do you sell stocks through them?

THE WITNESS: Well, if I bought the stock and I decided to sell it, yes, sir.

THE COURT: Well, that is all.

THE WITNESS: Thank you, sir.

Q And you from time to time received communications from the firm of John R. Maher Associates, written communications?

(No response from the witness.)

THE COURT: When you buy a stock from them what do you do? How do you do it? How do you do the transaction?

THE WITNESS: By telephone.

THE COURT: All right. And what happens after you call them up? What happens?

THE WITNESS: Oh they send me a piece of paper in the mail.

THE COURT: What does the piece of paper say?

THE WITNESS: That I bought so many shares.

THE COURT: That you bought so many shares.

THE WITNESS: Yes, your Honor.

THE COURT: And then after that what do you do?

THE WITNESS: I send them a check.

THE COURT: And how do you send them a check?

THE WITNESS: How? By mail, sir.

THE COURT: All right. When you sell some stocks, what happens to it?

THE WITNESS: They send me a piece of paper saying I sold it, and then they send me a check.

THE COURT: I am sorry, Mr. Lowe.

MR. LOWE: Thank you, your Honor.

THE COURT: I thought it might shorten something.

BY MR. LOWE:

Q Mr. Shaheen, do you know a person -- oh, excuse me, let me backtrack a moment.

What type of premises is 52 Clarendon Street, Boston, Massachusetts?

A It is an office and rooming house.

Q Whose office is it?

A My office.

Q Who owns the building?

A I do.

Q Do you know anyone by the name of Theodore Muollo?

A No, I don't.

Q Do you have any connection with an entity called The Estate of Theodore Muollo?

A I can't recall it. I might say "No" right now.

Q Have you ever had occasion to receive any mail addressed to The Estate of Theodore Muollo?

A Well, you -- I was shown a letter today, wasn't I?

THE COURT: Have you ever received --

THE WITNESS: I was shown a letter today, so I can't answer that, your Honor.

THE COURT: Prior to today.

THE WITNESS: No, sir.

THE COURT: I am sorry, Mr. Lowe. I should not intrude.

MR. LOWE: That is perfectly all right, your Honor.

THE COURT: (To jury) Sometimes I feel it is

more helpful if I bring out through a witness certain things, but the jury should not draw any inference by the fact that I ask a question or place any special importance to it.

All right.

BY MR. LOWE:

Q Did you for your own account physically purchase stock in a company called Franklin Properties through the firm of John R. Maher Associates?

A I did not.

Q Did you ever have occasion to discuss with anyone at the firm of John R. Maher Associates the entity known as The Estate of Theodore Muollo?

A I can't recall.

MR. LOWE: I have no further questions.

THE COURT: Mr. Berger?

MR. BERGER: I have no questions -- but the same objection.

MR. AIDALA: The same objection as to this.

THE COURT: No, I will deny the motions as to relevancy.

All right, you may step down. They have no questions.

(Witness excused.)

THE COURT: Unless you have a witness who is going

to be two or three minutes, Mr. Lowe, this might be time to recess for lunch.

MR. LOWE: I guess it is a good time to recess for lunch.

THE COURT: Do you have a witness for a couple of minutes or not?

MR. LOWE: No, I do not, your Honor.

THE COURT: All right, members of the jury, we will recess until 2 o'clock. Have a pleasant lunch. Don't discuss the case.

(The jury left the courtroom.)

(The following in the absence of the jury.)

THE COURT: Clearly the last witness's testimony has something to do -- in connection with the use of the mails, Mr. Berger.

MR. BERGER: I did not think so, your Honor.

THE COURT: Well --

MR. BERGER: I did not think so at all.

THE COURT: Well, he says when he bought and sold through Maher he got confirmation slips through the mail, and when he got bills through the mails for the purchase that he made he sent checks through the mails -- so at least as to that -- I am not sure that that was the sole purpose of this witness.

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MR. LOWE: It was not, your Honor.

THE CO[illegible]. I had to indicate that at least that part of it was relevant, but the balance of it --

MR. BERGER: It would be relevant and material, your Honor, if the government had proved that -- well, I am not going to tell you about the lack of proof, but my memorandum has set forth before what they have to prove.

THE COURT: All right.

MR. BERGER: Perhaps they were caught a bit short.

THE COURT: All right, anything else, gentlemen?

MR. LOWE: Your Honor, I have here for your Honor's consideration a folder which I believe would best be marked a Court's exhibit.

THE COURT: All right.

xx (Folder marked Court's Exhibit 1.)

MR. LOWE: This is being delivered to the Court for the Court's in-camera inspection, pursuant to the Court's previous request of the government.

THE COURT: All right. Can you get it back about a quarter to two?

MR. LOWE: Here or in your chambers?

THE COURT: Deliver it to my chambers about a quarter to two.

MR. LOWE: Certainly.

In addition to this, your Honor, I have been requested by my office to advise your Honor that prior to delivering anything in here to the defendants or to their counsel, that if your Honor should deem that there might be a possibility --

THE COURT: You would like to be advised of it so that you may take whatever steps you consider necessary.

MR. LOWE: Well, Mr. Edwards has specifically requested the opportunity to be heard.

THE COURT: Certainly.

MR. LOWE: Thank you, your Honor.

THE COURT: All right. Now how much of the afternoon do you think you will take, gentlemen?

MR. LOWE: Without being able to determine the extent of cross-examination, it is hard for me to say. I have, I believe, two witnesses remaining, one of whom is Mr. Doonan, whose testimony is known and can be expected by the defense. Basically it relates to the 5000 shares.

I have one other witness, Mr. Robert Sunshine of Denver, Colorado. I have some reason to believe that his testimony will be the subject of fairly intensive cross-examination by at least one of defense counsel, but I have no way of knowing how long it is likely to be.

THE COURT: All right.

MR. LOWE: His direct testimony I would expect to be reasonably brief -- probably no more than 15 minutes or 20 minutes at the most.

THE COURT: All right.

MR. AIDALA: By the way, if your Honor permits Mr. Doonan to testify, I would request that there be no testimony about any prior contacts with Mr. Rosenberg, because the inference would be drawn that there were prior difficulties with Mr. Rosenberg that necessitated Mr. Doonan's contacting him.

MR. LOWE: Assuming that I can have the same concession that was made on the record in the last trial that this defendant's voice is the voice on the tape which we claim to be his.

MR. BERGER: That is in evidence.

MR. IADALA: Judge --

MR. LOWE: It is in evidence.

THE COURT: Okay, then.

Why don't you just say "Yes" instead of all this jumping up and getting excited.

Also you gentlemen are supposed not to refer to the previous trial, but Mr. Aidala, you brought it out, and I am going to have to instruct this jury that whatever happened on a previous trial is not to concern them in any

way whatsoever, nor are they to speculate what happened there; they are only to decide this case.

When we originally started out it was "on a previous occasion," but you brought out "a previous trial" on cross-examination.

I don't know that that is a great big deal, but that is what happened, after everybody tried carefully up until that time not to bring it out.

Two o'clock, gentlemen.

THE CLERK: Court is adjourned until 2 o'clock this afternoon.

(Luncheon recess to 2.00 P.M.)

AFTERNOON SESSION

(2:00 p.m.)

(In open court; jury present.)

THE COURT: Call your witness.

MR. LOWE: I intend to call, your Honor, the witness as to whom the ruling was pending, I believe.

MR. AIDALA: Excuse me, Judge, I didn't hear what the prosecutor said.

MR. LOWE: I said I intended to call now a witness as to whom I believe there was a question of law pending.

THE COURT: Yes, you may call that witness.

MR. LOWE: The government calls Thomas Doonan.

MR. AIDALA: Judge, I have a motion that is pending, if it is what we th ink it is going to be.

THE COURT: It is, and by doing that the motion is denied.

MR. AIDALA: Without any testimony being held, is that correct, your Honor?

THE COURT: I guess you are correct.

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I didn't realize that we would have to take testimony. All right, I'm sorry. There will be a short recess.

(The jury left the courtroom.)

THE COURT: All right, do you have a warrant for arrest?

MR. LOWE: Yes, sir; Mr. Doonan has it with him.

THE COURT: All right.

T H O M A S P A T R I C K D O O N A N, called as a witness by the government, being first duly sworn, testified as follows:

THE COURT: Proceed.

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Doonan, by whom are you employed?

A I am employed by the Department of Justice. I am assigned to the United States Attorney's office in the Southern District of New York.

Q What is your position?

A I am a criminal investigator.

Q On December 8, 1975 did you make an arrest?

A Yes.

Q Whom did you arrest?

A William Rosenberg.

Q Is that the gentleman who is here in the room?

A Yes. The gentleman right there (indicating). The second man from my right at the defense table.

Q Did you have a warrant at the time you made the arrest?

A Yes.

Q Do you have a copy of that warrant here in court with you today?

A Yes.

Q Do you also have a copy of the complaint upon which this warrant was issued?

A Yes.

MR. LOWE: These ight as well all be marked as one exhibit, Government's Exhibit 20 for identification, please.

(Government's Exhibit 20 marked for identification.)

Q Mr. Noonan, is Government's Exhibit 20 a copy of the warrant of arrest and the complaint upon which it was based upon which you arrested William Rosenberg on December 8th?

A Yes.

MR. LOWE: For the purposes of the hearing, the government offers this, limited, of course, only to the hearing.

Any objection for purposes of the hearing?

MR. AIDALA: Not for purposes of the hearing, no.

THE COURT: All right.

(Government's Exhibit 20 was received in evidence.)

xx Q Mr. Doonan, after you palaed Mr. Rosenberg under arrest did you conduct a search of his body and his clothing?

A Yes.

Q At that time did you remove any tangible objects from his possession?

A Yes.

Q Showing you what's been marked Government's Exhibit 15 for identification, were those among the tangible objects that you removed from Mr. Rosenberg's person at the time you arrested him?

A Yes.

Q Could you tell us as best you recall where Government's Exhibit 15 for identification was im-

mediately prior to your taking it from Mr. Rosenberg?

A It was in his jacket pocket.

MR. LOWE: I have no further questions.

MR. AIDALA: What is Government's Exhibit 15?

MR. LOWE: The certificates, the receipt and the envelope.

CROSS EXAMINATION

MR. AIDALA:

Q Mr. Doonan, in addition to Government's Exhibit 15, which are the stock certificates and the receipt thereto and the envelope, what else did you seize from Mr. Rosenberg?

MR. LOWE: Nothing else will be offered, your Honor.

MR. AIDALA: I think it has a bearing on the issue, Judge.

THE COURT: All right.

Q What else did you seize?

A There was a piece of paper that was folded into several sections on which were recorded a number of phone numbers and names.

Q Where was that little piece of paper located?

A I believe that piece of paper was located in his wallet.

Q You took it from his wallet and seized it, is that correct?

A Well, he took it out of his wallet himself and gave it to me at my request.

Q How did you know it was in his wallet?

A I asked for everything that was in his wallet.

THE COURT: I don't see what relevance this has to the search pursuant to this warrant, which is the only thing that's going to be put in evidence. As I understand it, all you are going to put in evidence is the stock certificates.

MR. LOWE: The stock certificates were an envelope with a pink piece of paper. That's what we are offering.

Q Mr. Doonan --

A Yes.

Q Any of the items that you seized from Mr. Rosenberg, in your opinion at that time were they contraband? Do you know what contraband means? You are hesitating.

A Yes.

Q What's your understanding of contraband?

A I am going to ask you what you mean by contraband.

Q No, what do you understand by contraband?

A I would say fruits of the crime.

Q That's your understanding of contraband.

Now, was there any property that you seized from Mr. Rosenberg that you believed were fruits of the crime?

A I believed the stock certificates were.

Q What crime did you believe these particular stock certificates were the fruits of?

A The crime that he was conspiring to commit, in which he wanted to sell securities, in which he was going to kick back 50 per cent of the money he received for selling those securities to a broker.

Q Do you know whose stock certificates these are or were on the day you seized them?

A No.

Q Do you know or did you have any reason to believe that these particular stock certificates or that other piece of paper had anything to do with any alleged conspiracy?

A In my opinion on that day they had something

to do with a conspiracy.

Q Would you explain what you believed in your own mind these specific items had to do with any conspiracy?

A Well, Mr. Rosenberg and Mr. Rodman had contacted Mr. Noonan and had asked him to sell Franklin Properties at a dollar a share, to direct the orders back to John R. Maher Associates, for which he was to receive 50 cents on every dollar,kicked back to him in cash. Mr. Rosenberg was arrested with 5000 shares of Franklin Properties in his possession in Street name and I assumed at that point that that was part of the 5000 shares or part of a larger number of shares that he was going to sell to Mr. Noonan or through Mr. Noonan.

Q And you made the same assumption about the piece of paper you seized, too, is that correct?

A I assume from the piece of paper that there were certain phone numbers on there that may indicate or may be of Mr. Rodman or Mr. Nash or a Mr. Noonan or Mr. Rosenberg.

Q In other words, you seized them and you wanted to then conduct an investigation to determine whether they had anything to do with any crime, isn't

that right?

A Well, I wouldn't say that. At the point that I seized the peice of paper with the phone numbers on it I assumed that there were certain numbers on there that were relevant to this case.

Q What did you base that assumption on?

A What did I base it on? Years of investigative experience.

Q Years of investigative experience led you to an assumption that a piece of paper that was contained in the wallet had something to do with this case, is that your testimony?

A Because it had phone numbers and names on it, and I believe there were certain names that I recognized as people that I was familiar with.

Q But you didn't recognize them until you seized that piece of paper, isn't that correct?

A Not until I looked at it, that's correct.

Q And that was a small piece of paper that was secreted in his wallet, is that correct?

A That's right.

T2 Q Now the stock certificates, have you conducted an investigation about these particular stock certificates since you seized them?

A I have not.

Q To your knowledge, has anyone else conducted an investigation?

THE COURT: What does that have to do with this? While there is no objection I am not going to sit here and take a lot of irrelevant matter. I know Mr. Lowe is very happy to have you go into these things, but I do not see why it is necessary.

MR. LOWE: Well, sometimes I hesitate to jump up and down.

THE COURT: Well, don't hesitate. The only question here is whether he made a lawful arrest and seized anything on his person. I think it comes within the decision of the United States v.Robinson, 414 U.S. 218, and the cases that followed that, in connection with that unlawful arrest. There is no dispute about the arrest being lawful here, is there, pursuant to a warrant?

MR. AIDALA: Well, obviously, if the warrant is based on an improper affidavit --

THE COURT: Then why don't you go into the improper affidavit? You are going into what is in the

recesses of his warrant.

MR. IADALA: To show the state of mind of this witness, Judge, that he was going to seize anything.

THE COURT: He has a right to seize anything and to inventory everything that he has on him. Do you want to read United States v. Robinson?

MR. IADALA: Judge, had I known that the prosecutor was going to change his mind at this time --

THE COURT: I told you about this case before we recessed for lunch -- I gave you the citation.

BY MR. IADALA:

Q By the way, you made an affidavit, isn't that correct, in getting the warrant?

A Yes.

Q And in that affidavit isnt it a fact that you indicated that you interviewed or had more than one interview with Noonan?

A I would have to see the affidavit, Mr. Aidala. I haven't read that affidavit since December of 1975.

Q Look at the page that contains your sworn signature

A (After examining) Yes.

Q Having now looked at that, has that refreshed your recollection that you had had a number of inter-

views with Noonan?

A Could you tell me what paragraph you are referring to?

Q Well, there is only one paragraph on that page, at the top, and then there is the "Wherefore" clause.

A Oh, I see -- fine.

(After examining) Yes.

Q And before preparing your complaint and putting down there what you did put down, I assume that you went over the statements that Noonan gave you before writing out your complaint?

A What do you mean "went over" them? I mean, I listened to what Mr. Noonan said.

Q Did you check what you had taken down for the accuracy before writing up your complaint?

A Who would I check it with?

Q When you interviewed Mr. Noonan did you take certain things down as to what he said to you?

A No, I listened to him on December 4th and I listened to him on December 5th, and I listened to the recordings and I monitored the telephone conversations.

Q So you are saying what you wrote in that complaint is solely from your memory and never from any notes of what he told you?

A That is right. I wrote this on December 25th, of the same day I spoke to him and the day before I spoke to him.

Q Now what time did you arrive at Mr. Rosenberg's home?

A What time did I arrive?

Q Approximately.

A I guess some time around 7.30, 8 o'clock in the morning.

Q That was Monday morning, is that right?

A That is correct.

Q What state of dress or undress was Mr. Rosenberg in when you first saw him?

A Oh, I would say he was -- he had just walked out of the house. He had his coat on, his hat, his pants and his shirt. I don't know whether he had a tie on -- he had a turtleneck on, and he was with his wife, or this person that he told me was his wife.

Q Go ahead, finish.

A (Continuing) And they were getting into their car.

Q And this was --

A Let me clarify that. He came out first before his wife came out, so he was out first, so that is when

I saw him.

Q And is that the first time that you made contact with him?

A Yes.

Q And how was he dressed at that time?

A Just as I described.

Q Was it a cold day?

A Oh, yes -- it wasn't real cold, but, you know.

Q Had an overcoat on him?

A Yes.

Q Tell us again, where do you say you got Government's Exhibit No. 15 for identification, the stock certificates?

A Jacket pocket.

Q Coat jacket pocket?

A Suit jacket pocket.

Q Are you absolutely certain of that?

A Absolutely certain? Well, the only other thing I can do is I can look through my file and see if I have any indication as to which particular jacket.

Q All right, will you do that, please?

(Witness examines.)

THE COURT: I don't really see the relevance of this, Mr. Aidala.

Q By the way --

THE COURT: I do not see the relevance of this, Mr. Aidala.

MR. AIDALA: He said he found it some place, and my information is that it was somewhere else.

THE COURT: Did you find it on his person?

THE WITNESS: Yes.

THE COURT: All right.

Q By the way, do you have a file there of your statements concerning the facts that you just testified to -- is that correct? What are you looking through right now?

A What I am looking through right now are Xerox copies of those things that I saw on his person on that particular day, and a note down here of various other items which I gave back to him.

Q What other items had you taken from him and then returned to him?

THE COURT: We are only concerned with this item, Mr. Aidala.

Q Would you try and refresh your recollection --

THE COURT: No, I don't want him to refresh his recollection.

MR. AIDALA: No, I am asking the witness if he will refresh his recollection as to where he believes he

found those things.

THE COURT: Do you need your recollection refreshed?

THE WITNESS: No, it's his jacket pocket.

THE COURT: All right; very well.

Q Was it an inside or outside pocket?

A A pocket here (indicating) -- inside.

Q Now, Mr. Noonan --

A Doonan.

Q Doonan -- I am sorry. I have been under the impression and I should not assume anything, that you seized these items when you put Mr. Rosenberg under arrest at his home.

Now my assumption is incorrect, isn't it?

A That is correct.

Q You did not seize them from him when you first placed him under arrest, did you?

A I placed him under arrest. I put him in our car. We drove him to the United States Attorney's office and when we got here I took him into a room. I asked him to rem[illegible] his wallet and whatever other papers he had in his pocket and put them on the desk.

Q All right. You brought him down to the United States Attorney's office. How long did it take to get from

his house to the U.S. Attorney's office?

A An hour, an hour and ten minutes.

Q And before that time did you search him?

A I frisked him quickly to see if he was carrying any weapons.

Q Then you came into the United States Attorney's office and you went into an office, is that right?

A That is correct.

Q And when you got into the office was the office heated?

A Yes.

Q As a matter of fact, Mr. Rosenberg took off his overcoat and hung it up on a coat rack, did he not?

A Yes.

Q And is it not a fact that that is where you got those stock certificates from him -- his overcoat when it was hung on the coat rack and not from his person?

A No.

Q Would you swear to that under oath?

MR.LOWE: He just did.

THE COURT: Yes.

Q Are you positive?

A Yes.

MR. LOWE: Your Honor, Mr. Aidala does this every

day in this trial, and I am really sick of it.

Q Who else was present in the room with you and Mr.Rossenberg when y.. recovered thoss stock certificates?

A Mr. Bogan was in there for a while.

Q Was he there when you recovered the stock certificates?

A I don't recall.

Q Did you ask Mr. Rosenberg to remove his jacket before you searched him?

A His suit jacket?

Q Yes.

A No, I don't think so. I think I just told him to take whatever was in his pockets out, and after he had done that then I patted him down to check that he took everything out of his pockets.

Q When you did that, he was not wearing his overcoat, is that right?

A That is correct.

Q Did you at some point then check out his overcoat?

A I probably did, yes.

Q And isn't it a fact -- think backcarefully now -- isn't it a fact that that is where you found those stock certificates?

A My best recollection, it was in his suit jacket.

Q But you are not positive, is that right?

A My best recollection, and if that is my best recollection, that's the only positive statement I can give you.

Q By the way, you did not take Mr. Rosenberg alone; you were with someone else?

A Yes.

Q And who was that individual?

A Mr. Bogan.

Q And how much time would you say elapsed from the time you first entered the United States Attorney's office and Mr. Rosenberg took off his overcoat until you searched him?

A Oh, I would say five minutes.

MR. AIDALA: I have no further questions of this witness, Judge.

THE COURT: All right, is there anything further?

MR. LOWE: No, your Honor.

THE COURT: All right, you may step down.

(Witness excused.)

MR. AIDALA: Your Honor, may this witness be instructed, so there won't be any problem, that he is not to communicate with Mr. Bogen and my request is to call Mr. Bogen to testify now?

MR. LOWE: I have no idea where Mr. Bogen is, your Honor.

MR. AIDALA: The government was going to change its mind and offer these. It should have realized that I would, of course, make a motion.

THE COURT: No, they don't have to realize anything.

MR. LOWE: I might suggest that even if Mr. Aidala's --

THE COURT: Inference as to the questions were correct, it would still be admissible.

MR. LOWE: Yes.

THE COURT: I would so hold.

MR. AIDALA: So that the record is clear, your Honor would so hold that if they went and searched an overcoat that was not on the person of Mr. Rosenberg and seized this, it would still be proper?

THE COURT: Yes, I would so hold.

MR. LOWE: Under the circumstances.

THE COURT: Under the circumstances described by Mr. Doonan here.

Anything further, Mr. Aidala?

MR. AIDALA: No. I will except to your Honor's statement.

THE COURT: All right, the motion is denied. The certificates are admissible.

All right. Do you want to put Mr. Doonan on the stand?

MR. LOWE: Yes, sir, I do know.

MR. AIDALA: When you say they are admissible --

THE COURT: The motion to suppress is denied.

MR. AIDALA: Thank you.

THE COURT: All right, jury in.

(Jury present.)

MR. LOWE: Your Honor, it is my best recollection that this witness has not been sworn in the presence of the jury, nor has he stated his name for the jury.

THE COURT: That's right.

THOMAS PATRICK DOONAN, called as a witness by the government, being first duly sworn, testified as follows:

THE CLERK: Be seated, sir.

State your name.

THE WITNESS: Thomas Patrick Doonan.

THE CLERK: Thank you, sir.

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Doonan, by whom are you employed?

A I am employed by the Department of Justice and I am assigned to the United States Attorney's office in the Southern District of New York.

Q Is that the office in this district?

A That's correct.

Q What is your occupation?

A I am a criminal investigator.

Q Directing your attention to the date December 8, 1975, did you have occasion to make an arrest on that date?

A Yes.

Q Whom did you arrest?

A Mr. William Rosenberg.

Q The same Mr. Rosenberg who is here in the

courtroom today?

A Yes.

Q Would you point him out, please?

MR. AIDALA: The identification is conceded, your Honor.

THE COURT: Very well.

Q In connection with the arrest did you obtain any tangible property from Mr. Rosenberg?

A Yes.

Q Showing you what's been marked Government's Exhibit 15 for identification, can you identify those documents?

A Yes.

Q Can you tell us where you got them?

A I took them from Mr. Rosenberg in connection with the arrest when I arrested Mr. Rosenberg.

Q Where did you make that arrest?

A I arrested Mr. Rosenberg at his home?

A And what day was that?

A That was on Monday, December 8, 1975.

Q And specifically from where did you obtain the documents which are part of Government's Exhibit 15 for identification?

A These stock certificates and the receipt

were enclosed in this envelope and they were in his jacket pocket, the jacket he was wearing.

MR. LOWE: The government offers Exhibit 15 in evidence.

MR. AIDALA: Is this being offered subject to connection, Judge? Because I don't see the relevance at this point.

THE COURT: It is being offered in evidence.

MR. LOWE: That's correct.

MR. AIDALA: I object on the grounds of no relevancy.

THE COURT: Overruled.

MR. BERGER: The same objection, your Honor.

THE COURT: Overruled.

(Government's Exhibit 15 was received in evidence.)

BY MR. LOWE:

Q Mr. Doonan, were you assigned to work as an investigator during the investigation of the case which is presently on trial?

A Yes.

Q During the course of that investigation

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did you meet one Kenneth Noonan?

A Yes.

Q Did you have occasion to be present with Mr. Noonan at the time you made various telephone calls?

A Yes.

Q Did you have occasion to assist Mr. Noonan in recording those calls?

A Yes.

Q Could you tell us how it worked? Technically speaking, how did you and Mr. Noonan record the calls?

MR. BERGER: Objection, your Honor.

THE COURT: Tell us the procedurethat you followed.

A I took a Sony tape recorder, the one which you have here in the courtroom, the small one there, and I have a wire with a coil, and the coil is attached to the earpiece of the telephone. It is connected to that and then I also put another wire into the tape recorder with an earpiece which would allow me to monitor the telephone conversation.

I then placed the receiver back on the hook and Mr. Noonan then picked it up and made his telephone call.

As the call was being made and as Mr. Noonan

was speaking on the phone, I could listen to the entire conversation.

Q You said you could listen. Did you?

A I did.

MR. LOWE: I have no further questions.

CROSS EXAMINATION

BY MR. AIDALA:

Q Mr. Noonan, you arrested Mr. Rosenberg based on things that Noonan told you, is that correct?

A Based on things Noonan told me, and in adition to monitoring the telephone conversations between Mr. Noonan and Mr.Rodman and Mr. Noonan and Mr. Rosenberg.

Q And then you went out to Mr. Rosenberg's home early Monday morning, December 8, 1975, is that right?

A That's correct.

Q And were you alone or with someone else?

A I was with another gentleman, another criminal investigator by the name of Carl Bogen.

Q Did you wait until Mr. Rosenberg came out of his house?

A Yes.

Q And what time was that, approximately?

A I would say it was approximately 8 o'clock.

Q. Did you place him under arrest at that time?

A I went to Mr. Rosenberg and told him that I had a warrant for his arrest. I told him -- I advised him of his constitutional rights, and Mr. Rosenberg said that he had a personal problem at that point, he had to drive his wife, who wasn't feeling well, to the train station and would I show some compassion to allow him to take his wife to the train station so she would not know he was being arrested. I thought about it and I said, "Yes, I will do it."

Mrs. Rosenberg came out, they both got in the car, we followed them to the train station and then followed Mr. Rosenberg back to his house.

Q Now, is it not a fact that you were in a separate car from Mr. Rosenberg and his wife when he was driving his wife to the train station, is that correct?

A That's correct.

Q Is it not a fact that that exhibit, the stock certificates, was not recovered by you until, oh, an hour and a half later, approximately?

A That is correct.

Q Is it not a fact that while Mr. Rosenberg was in the car with his wife, if he wanted to get rid

of those stock certificates he could have given to his wife and you wouldn't have know about them, isn't that right?

A That's possible, if he knew why he was being arrested, but at that point he didn't know why we were arresting him.

Q In other words, when you placed him unddr arrest you failed to follow procedure and inform him of the reason he was being placed under arrest?

A Our procedure would be to advise him of his constitutional rights and that he is under arrest. I didn't indicate to him the specifics of the arrest.

You are right, I didn't indicate to him the specifics of the arrest.

Q And are you not required to indicate, at least in a general fashion, what the individual is being arrested for?

A He was advised later on.

Q No, I asked you at the time you picked him up.

No, you are right, I did not.

Q And that was a failure on your part, is that correct?

A No, it wasn't a failure. It wasn't my procedure at that point to advise him of that particular item. I advised him he was under arrest, I showed him the warrant we had for his arrest. On that warrant is indicated the violations of the particular title and --

Q What rights did you advise him of?

A His constitutional rights.

Q That's a conclusion. Would you tell the jury what it was you said to him?

A I said -- I told Mr. Rosenberg that he has a right to remain silent; anything that he may say to us can be used against him. He has the right to have an attorney. If he doesn't have the funds to pay for an attorney he can make application to the court for an attorney.

Q That was everything you told him about his rights, is that correct?

A That is correct.

Q In other words, after you asked him or told him he had the right to remain silent and refuse to answer any questions, you didn't ask him if he understood that, did you?

A Oh, yes, I did.

Q Now you remember.

A I did.

Q Did you tell him --

A Mr. Rosenberg understood me quite well because I had --

MR. AIDALA: I ask that that be stricken, Judge. It's volunteered.

THE COURT: Yes.

Would you return to the lectern, please.

MR. AIDALA: I'm sorry, yes.

Q You didn't tell him, did you, that he had a right to consult a lawyer now, at that time, did you?

A At that present time of that minute?

Q When you placed him under arrest.

A No, I did not.

Q And you didn't tell him he had the right to have a lawyer present during any questioning, did you?

A During the questioning?

Q Yes.

A I advised him he had a right to have an attorney and he shouldn't say anything, and if he does tell me anything it can be used against him.

Q But you didn't tell him he had the right to try to get an attorney then, did you?

A We weren't going to question him, Mr. Aidala. All we were doing was removing him from the scene of the arrest. Any questioning that was going to occur would have occurred later on.

Q Then according to your testimony, if I understand you correctly, you showed him the warrant, is that correct?

A That's correct.

Q And on it it alleged what the charges were against him, is that right?

A Right.

Q So he was aware, then, at that point that he was being charged and arrested for alleged stock fraud conspiracy, is that correct?

A I don't know. He didn't tell me what he knew in his mind. I just showed him the warrant.

MR. AIDALA: May we have that, please.

Q So that there is no question about it, the warrant indicated that he was being arrested for a violation of securities law, is that right?

A The warrant speaks for itself.

Q And then he was alone with his wife for

approximately an hour, is that right?

A Excuse me.

Q He was along with his wife in an automobile for approximately an hour, is that correct?

A No, that's not correct.

Q Approximately how long was he alone with his wife?

A Five minutes.

Q You drove to the station, is that correct?

A Mr. Rosenberg drove his wife to the train station there. It took five minutes.

Q Fine.

During that five-minute period of time he was alone in the car with his wife, is that right?

A That's correct.

Q And he would have had the opportunity during that time to give his wife anything that he had on his person if he desired to do so, is that right?

A He had that opportunity, yes.

Q Now, you then brought him to the U. S. Attorney's office, is that right?

A That's correct.

Q In the U. S. Attorney's office, what room did you bring him in?

A I brought him to the 7th floor.

Q And was that to where Mr. Lowe's office is located?

A That's correct.

Q By the way, Mr. Rosenberg was wearing an overcoat at the time, was he not?

A That's correct.

Q And he also had a suit jacket on underneath, is that correct?

A That's correct.

Q When you brought Mr. Rosenberg into the U. S. Attorney's office, were you and Mr. Bogen together?

A Yes.

Q And where did you first bring Mr. Rosenberg at that time?

A Well, Mr. Rosenberg was, let's say, in sort of the area where the secretaries were sitting outside Mr. Lowe's office.

Q And is that where there is a couch and there is a photostat machine in that general vicinity?

A No.

Q Do you mean the secretary located right on the outside of Mr. Lowe's office?

A That's correct.

Q Was he asked to sit there?

A No.

Q What was he asked to do?

A He was with Mr. Ogen. I went in and informed Mr. Lowe that I had made the arrest, that Mr. Rosenberg was under arrest, and I would be with him momentarily. I then left that room and I went to the room right next door to Mr. Lowe's office that was empty. I brought Mr. Rosenberg into that room and I asked to see the contents of his pockets.

Q When Mr. Rosenberg walked into that room with you did he still have his overcoat on?

A He may have been carrying it at that point. I think he took it off and he was carrying it.

Q And he hung it up, isn't that correct?

A It's possible that he hung it up on the coat rack in there, yes.

Q Now, how long were you with Mr. Lowe before you took Mr. Rosenberg into that other office?

A Two or three minutes.

Q By the way, did you and Mr. Lowe have a heated or excitable discussion during that period of

time?

A We were discussing something, yes.

Q And in a rather loud and excited voice, isn't that right?

A I wasn't, no.

Q Pardon me?

A I wasn't, no.

Q But the prosecutor was, wasn't he? Wasn't he?

A Well, he was talking his normal way. He wasn't yelling.

Q It was a little above normal, isn't that right?

A That's right. He wasn't yelling.

Q In other words, you had done something improperly or --

MR. LOWE: Objection.

THE COURT: Sustained.

Q What caused his consternation at that time?

MR. LOWE: Objection.

THE COURT: Sustained.

Q What was the discussion that you had between yourself and the prosecutor at that time?

MR. LOWE: Objection.

THE COURT: Sustained.

Q Had you failed to follow certain proper procedures, Mr. Doonan?

MR. LOWE: Objection.

THE COURT: Sustained.

Q Up to the point when you had brought Mr. Rosenberg into that room did you any way, shape or form have any fear of your life or your safety from Mr. Rosenberg?

A No.

Q You knew at that point, did you not, that he was in the securities business?

A Yes.

Q And you knew, did you not, that one of the securities he dealt with was Franklin Properties, is that correct?

A Yes.

Q And you knew that in dealing with Franklin Properties the dealer would receive and send out stock certificates, isn't that correct?

A Well, the extent of my knowledge of Mr. Rosenberg --

Q Excuse me --

A -- dealing in Franklin Properties was --

Q If you cannot answer my question, then would you please just indicate that.

Now, were you aware when you arrested Mr. Rosenberg that due to the nature of his business it was a normal procedure that he or anyone else in his business would be in receipt of stocks which they dealt with at any given time?

A Would Mr. Rosenberg be in receipt or would the firm, John R. Maher Associates, be in receipt?

Q Anyone who would be in the position of Mr. Rosenberg, who dealt in stocks, it would be the normal course from time to time for him to have stock?

A In their possession at home?

Q Yes.

A I have no knowledge of that.

Q When you received this stock which I am showing you they were in this envelope, isn't that correct?

A That's correct.

Q The envelope on the head, if I may read it, is Samuel B. Franklin & Company, Inc., 9701 Wilshire Boulevard, Suite 1104, Beverly Hills, California 90212, is that correct?

A Yes.

Q Am I also correct in saying that this is not an addressed envelope? In other words, this was not sent through the mails, is that correct?

A I have to assume that, yes. There is no stamp on it and no indication it was mailed at all.

Q The only indication is that someone used this envelope, placed the certificates in it, and handed them to Mr. Rosenberg?

A That's an assumption. I don't know how Mr. Rosenberg got the certificates. All I know is I found them on him.

Q They were not mailed to him, is that right?

A I don't know. It could have been another envelope that was mailed to him.

Q When you had Mr. Rosenberg in that room were you alone in there with him or was Mr. Bogen with you at the time?

A He was there for a short period of time. He left the room, came back and I think he left the room again and came back.

Q Was he present when you were searching Mr. Rosenberg or was it just at that point that he helped to step out of the room?

A He was present -- I would say he was present

during part of the search. Exactly what part I don't recall.

Q You seized a number of items from Mr. Rosenberg, isn't that right, in addition to the stocks?

A No, I only took one other piece of paper that had a lot of names and phone numbers on it.

(Continued on next page.)

T4 Q By the way, you have been working for a while on the investigation in this case, isn't that correct?

A Off and on. I have been working on other investigations, too.

Q Now, you had these stock certificates since December the 8th, 1975, isn't that right?

A In my possession.

Q In your possession or in the possession of the U.S. Attorney's office?

A That is correct.

Q And these stock certificates have various numbers on them, is that correct?

A Yes.

Q And you know that the U.S. Attorney's office seized all the records of John Maher concerning the Franklin Properties, isn't that correct?

A I know a grand jury subpoena was served for other records, or a trial subpoena was served for other records. What was received I don't know.

Q Do you know in the very least that the U.S. Attorney's office has in its possession and has had for a while the records of John Maher concerning Franklin Properties?

A They have certain records. I haven't examined all those records that they do have.

Q Did you make any records since December the 8th, '75, to ascertain who owns these stocks?

A I have not made any efforts.

Q Did anyone such as the prosecutor ask you to check that out?

A No.

Q Is there any other investigator, to your knowledge, who has asked to check that out?

A No.

Q Any member of the SEC who has asked to check that out?

A Not to my knowledge.

Q So to the best of your knowledge at this point, for all you know these stocks are owned by someone in California who gave them to Mr.Rosenberg to sell in the normal course of business?

A That is an assumption on your part. All I know is that they arein street name and they are in the name of John Mahar Associates.

Q And you know what street name means?

A Yes, that is right.

Q That means although those stocks are owned, to avoid paying transfer tax they are kept in street name?

A That is a possibility. That is one reason

for doing it.

Q And isn't that something that is done and is common practice in all the brokerage houses?

A Oh, yes, that is true.

Q And you did not think it would be important to find out who owned these stocks?

A I thought it was important, yes.

Q Did you communicate that to Mr. Lowe, the prosecutor in charge of this case?

A I probably -- I probably mentioned it to him. I don't recall specifically mentioning it to him. Mr. Lowe is aware of those certificates, and I gave those certificates to Mr. Lowe on -- (after examining) February 11, 1976.

Q And there has been no direction to you or anyone else to contact the owners of those stocks, has there?

A There has been no direction to me, and if any direction was given to anybody else I am unaware of it.

Q By the way, where do you say you found those stocks?

A You mean where were they when I took them from him?

Q Correct. Where do you say they were?

A In hi jacket pocket.

Q Is it not a fact -- and think back -- that these stock certificates were in his overcoat pocket, which overcoat was hanging on a coat rack in that office?

A My bestrecollection is they were in a suit jacket pocket.

Q That is your best recollection?

A In that envelope, that is correct.

MR. AIDALA: No further questions.

THE COURT: Any redirect?

MR. LOWE: Nothing, your Honor.

(Mr. Berger stands.)

THE COURT: You have done this several times, Mr. Berger.

MR. BERGER: I would like to ask him some questions.

THE COURT: Do you want to ask some questions?

MR. BERGER: Yes, I would like to ask some questions.

CROSS EXAMINATION

BY MR. BERGER:

Q Mr. Doonan, isn't it a fact that you cannot ascertain the owner of a stock in street name simply by looking at the street name?

A That's correct.

Q And that simply looking at these certificates which have been put into evidence as Government's Exhibit 15, you cannot ascertain who the owner is of these certificates?

A That's correct.

Q And you could not testify that in fact Mr. Bill Rosenberg or John Maher Associates were the owners of these stocks?

A No. All I could testify to is that they are in street name and in the name of John R. Maher Associates.

Q And it is common for securities to be kept at a brokerage firm in street name, is that correct?

A Yes.

Q And isn't one of the reasons for that so that if the customer desires to sell the stock in a fluctuating market or perhaps in a market which isn't even fluctuating, for purposes of speed he leaves his stock with his broker in street name?

A Yes.

Q Mr. Doonan, Mr. Rodman was not arrested along with Mr. Rosenberg, was he?

A No, you're correct.

Q In fact, Mr.Rodman wasn't named as a conspirator in this case until some time when the indictment came down

in January, is that correct?

A I have to assume what you are saying is correct. I did not prepare the indictment or file it.

Q Well, on the day that you arrested Mr.Rosenberg did you know that Mr. Rodman was a co-conspirator?

A Based on my conversation with Mr. Noonan and based on the telephone conversations I overheard, it was apparent to me that Mr. Rodman was a co-conspirator with Mr. Rosenberg.

Q Had Mr. Lowe told you that?

A What do you mean had Mr. Lowe told me that? He told me the facts, and then I evaluated those facts that he told me. I evaluated what Mr. Noonan told me, and I evaluated the telephone conversations, and it became apparent to me that Mr. Rodman was involved with Mr. Rosenberg.

Q As a co-conspirator.

A Co-conspirator, co-defendant. He was a target. He was involved -- as much involved with it as Mr. Rosenberg.

MR. BERGER: I would like to have this marked as Defendant Rodman Exhibit B.

THE COURT: B, yes.

(Defendant Rodman's Exhibit B marked for identification.)

xx

BY MR. BERGER:

Q Mr. Doonan, I show you this exhibit and ask you whether you can identify it (handing)?

A (After examining) This appears to be the affidavit I signed for the -- this is the complaint for which I received the warrant for Mr. Rosenberg's arrest.

Q Does that bear your signature?

A Yes, it does a Xerox copy of it.

MR. BERGER: I offer it in evidence (handing).

MR. LOWE: It is incomplete as offered, and therefore I object.

MR. BERGER: Are you satisfied with that (handing)?

MR. LOWE: Yes, with this attached I will be satisfied that it can be admitted in evidence.

THE COURT: Why don't we mark it all as one exhibit, then?

MR. BERGER: Yes.

(To the clerk) Just attach it.

(Defendant Rodman Exhibit B received in evidence.)

xx

BY MR. BERGER:

Q Now, were there any additional facts that you learned after December 5, 1975, concerning Mr. Rodman's

involvement in this case?

A Yes.

Q And did you learn those facts from Mr. Noonan?

A Some, yes.

Q And are those facts set forth in a recording anywhere?

A A tape-recording?

Q Yes.

A No.

Q I show you what has been marked as Defendant Rodman's Exhibit B and ask you whether this has been signed by you under oath, sworn to (handing)?

A (After examining) You are just talking about the first two pages?

Q Your affidavit.

A Yes.

Q Will you please read to the Court and jury the first paragraph of your affidavit:

"Thomas Doonan, being duly sworn, deposes and says that he is a criminal investigator employed in the office of the United States Attorney for the Southern District of New York and alleges and charges as follows:"

Read the first paragraph "1".

kp9 Doonan-cross

A "1. From on or about the 15th day of November and continuously thereafter up to and including the date of the filing of this complaint, in the Southern District of New York, William Rosenberg, the defendant,and others unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 77q(a) and 77x of Title 15, United States Code."

Q Thank you. So that according to your affidavit on December 5, 1935, Mr. Rosenberg conspired with others "unknown," is that correct?

A Well, according to that paragraph, that is correct, yes.

MR. BERGER: I have no further questions.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Is that paragraph a form that is generally followed in making out complaints?

A Yes.

MR. BERGER: Isn't it true --

MR. LOWE: Did I say I was finished?

MR. BERGER: I am sorry, I thought you were finished.

THE COURT: All right, gentlemen!

Q Did you prepare that form?

A No.

Q Do you know who did?

A Yes.

Q Who did?

A You did, Assistant United States Attorney Mr. Lowe.

Q Does that form also bear my signature?

THE COURT: Will you hand it up to the witness?

(Handed to witness.)

Q On the top.

A (After examining) Yes, "Approved: John A. Lowe."

Q You are not a lawyer, are you, Mr. Doonan?

A No, I am not.

Q Mr. Berger asked you whether after the 5th of December you learned some additional facts, and you said you did learn some from Mr. Noonan and otherwise?

A Yes.

Q Will you tell us what facts you learned from Mr. Noonan?

MR. BERGER: Objection, your Honor.

THE COURT: No, I will permit it.

MR. BERGER: I did not go into the facts. I asked him who he learned it from, but I did not go into the specific facts.

THE COURT: I will permit it.

MR. AIDALA: Well, Judge, I object on behalf of Mr. Rosenberg.

THE COURT: Yes, overruled.

A I had learned that Mr. Noonan and Mr.Rodman had other deals together, and that --

MR. BERGER: Objection, your Honor. That does not go to the issues in this case. It is being put in purely for prejudicial purposes.

THE COURT: Yes, that will be stricken. The jury will disregard it.

THE WITNESS: Do you want me to continue?

THE COURT: No, unless Mr. Lowe puts another question to you.

BY MR. LOWE:

Q Did you receive a telephone call from Mr. Noonan on or about the 10th of December, 1975?

A I don't recall.

Q Let me show you a copy --

A Let me show you this, I have received phone calls from Mr. Noonan. I don't recall that particular day and

that particular conversation. I have to see something.

Q Let me show you a copy of the document marked Government's Exhibit 3501-B for identification (handing), and ask you whether that refreshes your recollection as to whether you received a call from Mr. Noonan on or about the 10th of December, 1975?

A (After examining) Yes.

Q By the way, is that exhibit I just showed you, Government's Exhibit 3501-B for identification, in your handwriting?

A Yes, it is a Xerox copy of it.

Q Did you learn any additional facts relative to this case in the course of that phone conversation?

A Yes. Mr. -- it was apparent that Mr. Rodman was aware that Mr. Rosenberg was arrested --

MR. BERGER: Objection.

THE COURT: Sustained. What facts did you learn?

Q What did you learn?

A I learned that Mr. Rodman had contacted Mr. Noonan and that Mr. Rodman wanted to know if Mr. Noonan's telephone was tapped.

MR. BERGER: I move to strike, your Honor.

THE COURT: No, I will permit it.

MR. LOWE: I have no further questions.

(Mr. Berger stands.)

THE COURT: Are we going to follow the same order that we had before?

Mr. Aidala, do you have questions?

MR. AIDALA: Yes.

May I see the original of your notes, Exhibit 3501-B? The reason I am asking -- the original is what I wanted.

THE COURT: Fine. That is very easily taken care of.

(Mr. Lowe examines.)

MR. LOWE: I don't have the original.

RECROSS EXAMINATION

BY MR. AIDALA:

Q Well, I show you this document. In other words, there is a sentence and there is a blank portion, and there is an "and" -- it appears that something is missing from the photostatic copy.

Do you see the portion I mean?

A You want to know if something is missing?

Q Yes.

A Nothing is missing,but when I am sitting there jotting some notes down and someone is talking to me, and I am on the phone, I am just jotting the notes -- that's it.

I may skip a spot. I may go down here (indicating) or be on the corner, depending on how my mind is working, and as I am listening to the conversation.

Q And is it not a fact that what you were told by Kenny Noonan was that Rodman had asked him whether he, Kenny Noonan, had "set up Mr. Rosenberg." Isn't that what you were told?

A Mr. Rodman wanted to know whether Mr. Noonan had set up Mr. Rosenberg?

Q Yes.

A Well, that is possible he was asked -- it's possible he said that to me.

Q Is it possible or is that exactly what was asked by Mr. Rodman, whether Rosenberg had been set up by Noonan?

A Well, what I have down here --

MR. AIDALA: Excuse me, Judge. I will ask your Honor to instruct the witness accordingly.

THE COURT: Yes. What is the question?

MR. AIDALA: Will you read the question?

(Record read.)

THE COURT: I think you better ask another question.

Q Is it not a fact that what Noonan told you

was that Rodman wanted to know whether in fact Kenny Noonan had set up Mr. Rosenberg. Isn't that what you were told?

A Yes,yes.

MR. AIDALA: No further questions.

THE COURT: Mr. Berger.

RECROSS EXAMINATION

BY MR. BERGER:

Q Mr. Doonan, how long have you been with the United States Department of Justice?

A Since April of 1971.

Q Have you seen many indictments?

A I have looked at them, yes. I don't know -- two or three a year, yes.

Q Isn't it a fact that the boilerplate on an indictment is filed as "Persons known and unknown"?

A I couldn't answer that, Mr. Berger.

MR.BERGER: No further questions, your Honor.

BY MR.LOWE:

Q The document we have been referring to here is not an indictment, is it?

A No, it is a complaint.

MR. LOWE: I will offer Government's Exhibit 3501-B in evidence (handing).

MR. AIDALA: Judge, on what ground? I would like to hear the ground at the bench. It is an unusual offer.

THE COURT: Do you object to it?

MR. LOWE: Is there an objection?

THE COURT: Do you object to it?

MR. BERGER: I object to it, your Honor, because it is --

THE COURT: All right, sustained, sustained.

BY MR. LOWE:

Q Mr. Doonan, tell us to the best of your ability to recall just what it was that Noonan reported to you on or about December 10, 1975.

A He said that he had gotten a call from Rodman and that he -- that Rodman wanted to know from him whether he had set up Rosenberg or whether someone had placed a tap on his phone.

MR. LOWE: Nothing further.

THE COURT: Anything further?

(No response.)

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. LOWE: The government calls Arthur Pendrick.

MR. AIDALA: Judge, based on the testimony I now move to strike the stock certificates as not being relevant.

THE COURT: Motion denied.

A R T H U R P E N D R I C K, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Pendrick, by whom are you employed?

A John R. Maher Associates, Incorporated.

T#5

Q In what capacity are you employed there?

A President of the firm.

Q What is the business of that company?

A The company is engaged in the securities business. We are a broker-dealer. We buy and sell securities for our own account and the account of the customers.

Q How long have you been employed as president of John Maher Associates?

A Since approximately January of 1975.

Q Is John Maher Associates registered with the Securities and Exchange Commission as a broker-dealer?

A That's what I stated before, yes.

Q I'm sorry. I must have not heard correctly.

Do you know the defendant in this case, William Rosenberg?

MR. AIDALA: Identification is conceded, your Honor.

THE COURT: Very well.

Q Who is Mr. Rosenberg?

A William Rosenberg is a trader for the firm.

Q Is he an employee of the firm?

A He is employed by the firm as a trader.

Q What does he do as a trader for the firm?

A A trader makes markets in many stocks. He would quote prices to other brokers calling the firm and these would be the prices at which he would be willing to conduct business.

Q Who is the owner of the firm John Maher Associates?

A Ethel Rosenberg.

Q Who is she?

A William Rosenberg's wife.

Q Are you familiar with a stock known as Franklin Properties, Inc.?

A Yes. That's one of the stocks which Bill Rosenberg trades.

Q When you say Bill Rosenberg trades, do you mean on behalf of John Maher Associates?

A That's correct.

Q Directing your atteniton to December 4, 1975, did you receive a telephone call on that day from a gentleman named Ken?

A I do not recall if it was the 4th or the 5th. We have been over this before. Originally, I told you I thought it was a Friday and a Monday. You indicated to me it was a Thursday and Friday, which

was the 4th and 5th, and it conceivably have been that date.

Q Well, is it possible that it was later than teh 5th?

MR. BERGER: Objection, your Honor.

MR. AIDALA: Objection.

THE COURT: Rephrase the question.

Q Could it conceivably have been later than December 5th based on what you know of the calendar?

A It's possible.

Q What day was December 5th?

A I believe the 5th was a Friday.

Q Did you do business on the 6th or 7th in your office?

A No. The market is closed on the weekend.

Q What happened the morning of the 8th?

A As far as what?

Q As far as your firm and Mr. Rosenberg and Franklin Properties is concerned.

A I don't recall.

Q Did anything happen on the 8th relating to Franklin Properties?

A It might have. I am not sure of the dates.

Q Wasn't the stock suspended from trading on that day?

A The stock was suspended from trading early in December. It could have been the 8th.

Q Isn't it a fact, Mr. Pendrick, that the conversations that you had with this person named Ken Took place on two consecutive days?

MR. BERGER: Objection, your Honor.

THE COURT: I will permit it. You may answer.

A Originally I told you that I thought the conversations took place on a Friday and a Monday. You indicated to me that they took palce on a Thursday and Friday. The only reason that I even remember the conversations is because this fellow Noonan was extremely anxious to get hold of Rosenberg, but I don't recall the dates.

Q Mr. Pendrick, is that the only reason you remember the conversations?

A It's very rate that somebody calls the office and urgently --

Q Answer my question. Is that the only reason you remember the conversations?

A Yes. That's the reason.

Q Haven't you heard tapes of those conversations, Mr. Pendrick?

A Since that time, yes.

MR. AIDALA: Excuse me. Is Mr. Lowe impeaching his own witness?

THE COURT: He is permitted to. As a matter of fact the new rules permit many things to occur which I would permit in this case.

Q You have heard tapes, have you not?

A Yes, I have heard the tapes.

Q And there is no question in your mind, is there, that those are tapes between yourself and this person Ken, right?

A Absolutely.

Q There are two conversations, right?

A There were two conversations that I had with Ken.

Q And having heard both of them, don't you know for sure that they took place on two consecutive days?

A I don't recall. It could have taken place on two consecutive days.

Q Doesn't the second conversation contain the statement, "Weren't you able to reach him last

night"?

A It might have.

Q Well, does it or doesn't it?

A I don't recall. It might have.

Q Mr. Pendrick, do you recall giving testimony last week?

A Yes, I do.

Q Directing your attention, gentlemen, to page 252 of the transcript --

MR. AIDALA: May I be permitted to look over his shoulder since I don't have it, Judge, to make sure it's accurately being read?

MR. LOWE: Of course.

THE COURT: I will permit you to look over his shoulder. The rest of that remark will be stricken.

Q "Q Well, do you remember specifically what day it was?

"A Well, I received two calls from him. One was on a Thursday, one was a Friday, and it could conceivably have been the 4th. The 3rd and 4th or the 4th and 5th, I am not sure.

"Q Was it Thursday and Friday, the first Thursday and Friday in December, 1975?

"A Yes."

Do you recall being asked those questions and giving those answers last week?

A Yes, that I recall.

Q What's happened since last week to change your memory?

A I am repeating what I had discussed with you when we had several meetings and initially went over the dates. I told you at that time it could have been a Friday and a Monday, it could have been a Thursday and Friday or it could have been a Wednesday and a Thursday. If you are indicating to me that the conversations took place on Thursday and Friday, I merely said before that they could have taken place on that date.

Q What I am trying to find out from you, Mr. Pendrick, is could they have taken place any time later than that Friday, December, 1975? Is it even possible?

A Not -- if Franklin Properties was suspended on the 8th, then it probably did not take place later than the 8th, it took place prior to that.

Q You are the president of the firm, aren't you, Mr. Pendrick?

A That's correct.

Q And you are in charge of it, aren't you?

A That's correct.

Q You are responsible for its operations, aren't you?

A Yes, I am.

Q And Franklin Properties was one of the stocks that the firm traded, wasn't it?

A Yes.

Q And you can't remember the day the trading in a stock for which you were the trader or the market maker --

MR. BERGER: Objection.

Q -- was suspended?

THE COURT: No, I will permit it.

A I was not the trader. The stock was an extremely inactive stock when this investigation first started. I looked over the last couple of years of activity in Franklin Properties. It had been quite inactive. Mayve we did 20 or so trades during the course of a year.

Q Does that mean that you don't remember the stock being suspended?

A Oh, I definitely remember it being suspended

because I personally received the call from the Securities and Exchange Commission telling me that the stock had been suspended due to recent market activity, and I remember calling the Securities and Exchange Commission, because it is one of the stocks which we traded, to find out what in fact, you know, did take place.

Q Before it was suspended, Mr. Pendrick, didn't you in fact know that it was going to be?

A Yes.

Q And how did that come about?

A I was told by William Rosenberg that the stock might be suspended by the SEC and he wanted to let me know that that would take place.

Q And he told you that the same day it was suspended, didn't he?

A I don't recall.

Q What else did he tell you when he told you that?

A He told me at that point that he had been arrested.

Q Okay. Did he tell you he had been arrested that day?

A I don't remember. It might have been

the afternoon -- it might have been the same afternoon that he was arrested, if that will help establish the date.

Q Is there any question in your mind that the calls you got from Ken came before the day Mr. Rosenberg told you he got arrested?

A No, they were before.

Q All right, you got a call from Ken, is that right?

A I received two calls from Ken, the sequence being the first one came on an afternoon, I believe, that was the first call.

Q That's a call, right?

A Yes, that's a call.

Q Okay. Let's stop there and go from there.

After that first call that you got from this gentleman who identified himself as Ken, did you have any conversation with Mr. Rosenberg about it?

A No.

Q At any time?

A No. I left a message for him, which is our standard procedure. When somebody is out of the office, we will write a little memo and leave

it on the gentleman's phone. He received that message the next morning, that Kenny had been urgently trying to get to him.

Q Did you speak to him that morning?

A Yes. I spoke to him in the morning.

Q I went over most of his messages with him, and I assume that included the fact that Ken had called.

Q Did you or did you not tell Mr. Rosenbeeg the next morning that Ken had called him?

A Well, I don't know if I told him or whether it was just written if we specifically went over it, but I imagine he found out about it.

Q Once again, Mr. Pendrick, you do recall giving testimony last week, don't you?

A Yes.

Q And when you did give testimony last week, were you asked the following question and did you give the following answer, referring to page 252, starting at line 23:

"Q What was the conversation?

"A No, it was earlier in the morning that I spoke to Mr. Rosenberg. It's normal procedure in the office when somebody is out to leave a written notice on

their telephone as to what calls they received the prior day or while they were out. Mr. Rosenberg got that message earlier in the morning and I might have also mentioned it, went over the list of five or six messages that he had had that day, and it was in the morning when he came in that I mentioned to him that Mr. Noonan urgently wanted to try to get him last night"?

A I thought that was what I had just stated.

Q Well, you indicated a certain uncertainty about whether you verbally communicated with him or not. Did you or didn't you?

A I am sure -- I communicate with him every morning, so I will say yes.

Q Did there come a time when Mr. Rosenberg told to you what this person named Ken was calling the firm about or calling him about?

A Yes, there did come a time.

Q When?

A I believe it was some time aftet I had my second conversation with Noonan, at which time he indicated, or I might have assumed, I don't recall, that he had an interest in Franklin Properties because I was expecting somebody to call that was interested in

purchasing about 2500 shares of stock. It was subsequent to that that I spoke to William Rosenberg and he indicated that Kenny was the fellow who was interested in purchasing some amount of shares.

Q You said you were expecting a call. What led you to expect that call?

A Bill Rosenberg indicated to me that somebody might be calling having an interest -- a buy interest in Franklin Properties.

Q Directing your attention to Government's Exhibit 7D for identification, Mr. Pendrick, is that a record that is made and kept in the ordinary course of the business of John Maher Associates?

A Yes, it is. This is from our stock record for Franklin Properties which indicates --

Q Before you tell us what it indicates just answer the questions.

A Yes.

Q And is it the ordinary course of the business of John Maher Associates to make and keep a record such as that?

A Yes, we do it on a daily basis for all the stocks which we have any position in for the firm or for customers.

Q Do you do it every day or just the day that there is a change?

A No. Daily. We keep it daily.

Q And is this particular record the stock record for the stock of Franklin Properties?

A Yes, it is.

Q For the period from the 5th of September, 1975 through the 2nd of December, 1975?

A Yes.

MR. LOWE: The government offers 7D in evidence.

MR. AIDALA: May we have a voir dire, your Honor.

THE COURT: Yes.

VOJR DIRE EXAMINATION

BY MR. AIDALA:

Q Mr. Pendrick, is this your handwriting on this exhibit? Take a look at it.

A I know that it is probably not.

Q Well, who would keep those records in the office?

A At present, Lou Scala. He is our cashier.

MR. AIDALA: May we have a moment, your Honor?

(Pause.)

MR. AIDALA: We have no objection, your Honor.

THE COURT: Received in evidence.

(Government's Exhibit 7D was received in evidence.)

DIRECT EXAMINATION CONTINUED

BY MR. LOWE:

Q Directing your attention, Mr. Pendrick, to the top line of the page, on the page, that has one number and a slash and another number filled in in each column, right?

A Correct.

Q Those refer to the dates, right, the month and the day?

A That's correct.

Q Can you tell us what year this relates to?

A '75. It begins over here and it just goes right through.

Q Now, directing your attention to the second box down in the columns, those have --

A The number of shares in position that we had in trading. On 12/2 we had 7000.

Q What is trading?

A Owned by the firm.

Q And that record shows that the firm, on the 2nd of December, owned 7000 shares?

A That's correct.

Q For its own account?

A That's correct.

Q As a firm.

A Yes.

Q By the way, did you tell us before that this record was kept for every day?

A Yes. That's incorrect. It's only when there are trades made. Then it is changed.

Q In other words, only when there is a change is there an entry made?

A That's correct.

Q So that if there is a lapse of dates between one entry and the next, that means there was no change --

A No trade.

Q -- between those dates?

A That's correct.

Q Directing your attention, Mr. Pendrick, to Government's Exhibits 7G and 7F for identification,

are those copies of records made and kept in the ordinary course of the business of your firm?

A Yes, they are.

Q And is it the regular course of the business of your firm to make and keep records such as those?

A Yes.

Q Specifically what are those records?

A They are copies of confirmations of trades which are done for the particular individuals that are mentioned here for their account.

Q And those are customers --

A Customers of the firm.

Q Of the firm.

A In this case. Let me see the rest. Yes, these are customers of the firm.

Q The addresses, are those the addresses which are on the records of the firm as the address of those customers?

A I would imagine so, yes.

MR. LOWE: The government offers 7G and 7F in evidence.

(Pause.)

THE COURT: All right, gentlemen.

MR. AIDALA: Quite frankly I don't see

the relevancy and for that reason I am going to object.

THE COURT: Let me see the documents, please.

(Pause.)

THE COURT: I will receive them.

(Government's Exhibits 7F and 7G were received in evidence.)

xx Q Mr. Pendrick, do you from time to time handle transactions over the telephone for customers of John Maher Associates?

A Yes.

Q Have you yourself ever handled the transction involving the stock Franklin Properties?

A I don't believe so, no.

Q Do you know a Mr. William Rodman?

A No.

Q Have you ever had occasion to make a telephone call to Mr. William Rodman from the offices of John Maher Associates?

A No, I did not.

MR. LOWE: I have no further questions.

THE COURT: Mr. Berger?

CROSS EXAMINATION

BY MR. BERGER:

Q Mr. Pendrick, do customers come up to the offices of John Maher Associates and use the telephone?

A Yes, they do.

Q Do you keep a record of every customer that comes up and uses the phone?

A No, we do not.

Q Has Leon Nash ever been up to the offices of John Maher?

A Yes; several times.

Q Has he ever used the phone?

A Yes.

Q Did Mr. Rosenberg, on or about the 5th day of December, 1975, ever tell you that he was expecting an order for approximately 30,000 shares of Franklin Properties stock?

A No, he did not.

(Continued on next page.)

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Q In December of 1975 how many shares of Franklin Properties stock did the firm of John Maher Associates own?

A As of December 2, as we just saw in the stock record page, we had 7000 which the firm owned.

Q I show you what has been marked as Government's Exhibit 15 and ask you whether you can tell whether these stock certificates areowned by John Maher Associates (handing)?

A Yes, these could be owned by John Maher Associates.

Q And could they have been owned by someone other than John Maher Associates?

A Yes, they could.

Q Is there any way for you to tell from the certificate whether they are or are not?

A No.

Q On December 5th or 4th or 3rd of 1975 did you ever hear Mr. Rosenberg mention the name of Rodman, William Rodman, with respect to Franklin Properties?

A No.

Q With respect to the consummation of sales and purchases at John Maher Associates, has the firm ever sent a confirmation of purchases or sales other than through the mails?

A Sometimes we have clients that come up to the firm on the day they do a transaction and will pick up their confirmation by hand, and in that case it would not be sent through the mails.

Q That would be considered a hand delivery.

A Yes.

Q Is it essential in order to consummate the sale or purchase of securities to use the mails?

A No, I would say it is not essential.

Q And if a person wished to avoid using the mails could he do so?

A I imagine, yes, he could.

Q And would the fact that one has avoided use of the mails in any way make the purchase or sale void?

A No, not to my knowledge.

MR. BERGER: Thank you. I have no further questions.

CROSS EXAMINATION

BY MR. AIDALA:

Q Mr. Pendrick, did you testify on direct examination that you originally received a call from an individual who was very anxious to contact Mr. Rosenberg -- is that correct?

A Yes, that fellow Kenny was quite anxious.

Q And did he indicate to you that he was going to try to contact Mr. Rosenberg at his home later that evening?

A Yes, he wanted to contact him urgently and asked me for his home phone number, and I believe I gave him an address where he would be able to contact -- call information and contact Rosenberg.

Q On the next occasion that you heard from this individual, Mr.Rosenberg was not in the office at that time, is that right?

A That is correct.

Q And again did the individual who called sound extremely anxious and urgent to contact Mr. Rosenberg?

A I would say yes.

Q Are there certain customers of John Maher Associates who are, if I may use the expression, voices on the phone, mamely, people whom you have never met in person but have just communicated with you via the phone?

A Yes.

Q And are these persons who may have called up and established an account and put in orders to buy and sell --

MR. LOWE: Your Honor, I am going to object to any leading questions on any subject outside the scope of

kp4 Pendrick-cross

my direct examination. I don't object to questions but to leading questions.

THE COURT: Yes, rephrase the question.

Q Do you understand what I mean by voices on the phone, of customers?

A Yes. We pick up accounts either through recommendations or they call up the firm because we are trading a particular stock and would voice interest in doing business, and we subsequently will open an account for these people, and once -- it is conceivable that we never met the people in person and they are voices on the telephone.

Q In fact, as of today, is it not true that there are people who you deal with on the regular basis whom you have never met?

A That is correct.

Q In other words --

THE COURT: These people on the phone, do you have some kind of way of opening an account with them?

THE WITNESS: Sure.

THE COURT: How do you do that?

THE WITNESS: We send them a new account form which contains all the information which we would require

before we open a new account; we discuss the type of investment they want to make as far as the suitability to their needs and position in their respective lives are concerned, and I do not require money in advance on a small transaction, although if it is a customer that we don't know and it's a larger transaction we would require some sort of a deposit first, and then you just develop a history of doing business with the customer.

THE COURT: You cannot do all that on the phone?

THE WITNESS: No, but I am saying this is over a period of time.

THE COURT: Yes, but you do not do all this over the phone?

THE WITNESS: No, we mail them a new account card.

THE COURT: I see; fine.

Q So to use a hypothetical, if you received a call from Mr. Frank Smith from Wyoming who said, "I understand you are trading in XYZ stock, and I would like to buy 100 shares" -- right? -- you would eventually send a card out to him?

A We send it to him with the initial purchase. We would execute that type of order.

Q And then he would send back that his name is Frank Smith, Box 123, and a business relationship would

develop; is that correct?

A That is correct.

Q And as long as he paid when he ordered stocks there would be no difficulty, would there?

A None whatsoever.

Q And you may never ever meet that man, is that correct?

A Yes.

Q And you wouldn't even know whether that was his correct name, would you, as long as he paid the stock?

A I suppose not.

Q All right. Now could you tell this jury approximately how many times you have been questioned outside of this courtroom by the U.S. Attorney in his office?

A Maybe six times.

Q And can you describe to the jury the manner in which you have been treated?

MR. LOWE: Objection.

THE COURT: Yes, sustained.

Q Have you been threatened by the U.S. Attorney?

MR. LOWE: Objection.

THE COURT: Yes, sustained.

Q Have you been told that he wouldn't ask you

certain questions because he didn't like your answers?

MR.LOWE: Objection.

THE COURT: Yes, sustained. I will permit inquiry here, but if you ask the questions in the proper form, the proper way, I will permit certain inquiry.

Q Did the U.S. Attorney ask you about certain conversations that you had with Mr. Rosenberg?

A Yes, he did.

Q And did you tell him the conversations that you had with Mr. Rosenberg?

A Yes.

Q And after you related that, did he tell you that he wasn't going to ask you that question in court because he did not like your answer?

MR. LOWE: Objection.

THE COURT: Sustained.

Q Mr. Lowe asked you about your conversations with Mr. Rosenberg, part of them. Will you relate to the jury your full conversation with Mr.Rosenberg concerning Franklin Properties?

MR. LOWE: Objection.

THE COURT: Yes, sustained.

Q Do you recall on direct examination Mr. Lowe asking you about a conversation with Mr. Rosenberg con-

cerning Franklin Properties?

A Yes.

Q Would you relate the full conversation you had concerning the matter that the U.S. Attorney questioned you about?

MR. LOWE: I asked questions about Ken, and that's all. I don't recall asking any other questions, as far as conversations are concerned.

May I have a ruling?

MR. AIDALA: He asked about conversations.

THE COURT: He asked about conversations with Ken.

MR. AIDALA: No, beyond that. I ask that the record be read back, if there is any doubt in the Court's mind.

THE COURT: Have you given us all of the conversations that you had with respect to Ken?

Q Will you give us all of the conversations that you had with Mr.Rosenberg concerning Ken and Franklin Properties?

A Yes --

MR. LOWE: Your Honor, I object. We have to limit this to prior to December 8th.

THE COURT: Yes.

MR. AIDALA: Excuse me, Judge. He asked him at any time.

THE COURT: Yes, prior to December 8th.

Q Do you remember Mr. Lowe questioning you about a conversation that you had with Mr. Rosenberg on December the 8th concerning the suspension of Franklin Properties?. Do you remember he asked you about that on your direct testimony?

A Yes, that I remember

Q And would you tell the Court the full conversation that you had with Mr.Rosenberg?

MR. LOWE: Your Honor --

THE COURT: I will permit that.

MR. LOWE: Your Honor, this is after the arrest of Mr. Rosenberg.

MR. AIDALA: He opened the door, your Honor.

THE COURT: I understand that. If that is part of the conversation, I will permit it.

MR. LOWE: Very well.

Q You may answer.

A Would you repeat the question?

(Question read.)

A Regarding what point in time are we talking about?

Q This is when you were speaking to him on December

the 8th, when he was telling you about the facts, what had happened, and the fact that Franklin was going to be suspended. Relate the full conversation that you had with him.

A Mr. Rosenberg told me that Franklin Properties would be -- might be suspended by the Securities and Exchange Commission. At that time he mentioned the alleged taped conversation which he had had with Ken, and I think it was on or around that time that he mentioned something to me about possibly leading this fellow Kenny on, but I don't recall exactly in what context he did say that.

Q Have you, prior to testifying in this court, informed the U.S. Attorney of that entire conversation, including the part about Mr. Rosenberg told you that he was leading Kenny on?

A I mentioned it to the U.S. Attorney.

Q And what did the U.S. Attorney say to you with respect to that?

A At that point, nothing.

Q Did he tell you that he was going to ask you that question in court?

A At one of our sessions he indicated that he was going to ask me questions regarding that particular topic,

and he had a piece of paper which indicated what I had said regarding that matter at a previous meeting which I didn't think was quite accurate, andat that time he did say to me that he would not ask me that, or maybe in another telephone conversation he indicated that he would not ask me that question.

Q By the way, in the normal course of business of John Maher would people give them the actual stock certificates to sell?

A Yes, surely.

Q Did you ever have a conversation with Mr. Rosenberg where he told you, in words or substance, that he was going to sell 150,000 shares of Franklin Properties?

A No, never.

MR. AIDALA: I have no further questions.

THE COURT: Mr. Lowe.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Pendrick, is it the ordinary course of business for people to deliver their stock certificates to you in negotiable form -- and, by the way, Government's Exhibit 15 in evidence is in negotiable form, isn't it?

A Yes.

Q Is it the ordinary practice for people to deliver

securities to you in negotiable form and for you to take them home with you?

A No.

Q What do you ordinarily do with securities in negotiable form that are entrusted to you for safe-keeping?

A We will put it into the account of that particular customer, pending the delivery and the consummation of the sale.

Q What do you do to the certificates themselves

A Oh, we put it in our vault.

Q In the vault?

A Yes.

Q If the thing is lost on the street anyone could sell it?

A Oh, absolutely, and we mark the customer's name on the certificate that it belongs to, and we will keep it in our vault with the other Franklin Properties stock or whatever we may have.

Q You ordinarily mark the customer to whom it belongs, his name on the certificate?

A Yes.

Q On the front or the back?

A We segregate -- right on the front, as a general

rule.

Q This conversation, Mr. Pendrick, that you had with Mr. Rosenberg about this --what you call an alleged tape, do you recall for sure when you had that conversation with him?

A No. It was early -- early December. I don't recall exactly when it was.

Q Well, let me ask you this, when you had it had he told you that he had heard this alleged tape?

A He may have and he may not. I really don't recall.

Q What did he tell you about this alleged tape?

A He was informing me of the fact that he had been arrested. This was, you know, the reason.

Q Was this right after he had been arrested or was it right after he had been indicted?

A I am not sure, I don't recall.

Q You don't recall which?

A The time period.

Q You don't recall, is that your answer?

A That's my answer.

Q And you can't recall whether or not Mr. Rosenberg told you he had listened to this alleged tape, as you call it?

A No, I don't, I don't remember.

Q Did he tell you what was on the alleged tape?

A We discussed it very briefly.

Q Did he tell you what was on it?

A He gave me the gist of the conversation.

Q And in the course of giving you the gist of the conversation he told you, did he not, that he was just leading this guy on --is that the word he used, "leading" him on?

A Yes, that is the word he used.

Q Have you quoted him ever as using the word "egging" him on?

A Not as far as I know.

Q Did he also tell you that he was just trying to find out who was manipulating up the stock and to get all the bad people out of the company?

A No, I don't recall that. He just mentioned, and I again am not quite sure of the context, and I believe I told you that once in your office - he mentioned to me simply that he -- something about leading Kenny on, and I don't know what context he used that in.

Q Mr. Pendrick, with regard to when Mr. Rosenberg told you about the leading-this-guy-on business, I would like to direct your attention to a document marked Govern-

ment's Exhibit 3504-A for identification, page MTC3 of that document, starting approximately in the middle of the page, reading over to the next. Just read it to yourself, Mr. Pendrick, and when you are finished indicate that you are finished (handing).

A (After examining) Where is this document from?

Q Just read it.

(Pause.)

THE COURT: Have you read it?

THE WITNESS: Yes, one moment.

(Pause.)

A Yes, that's accurate.

Q Does that refresh your recollection as to when Mr. Rosenberg told you this business about the leading Kenny on?

A As I say, I don't recall when he had told me that. It might have been after that, might have been at that time. I don't know.

Q Well, Mr. Pendrick, did you testify before the grand jury on January 14, 1976?

A Yes.

Q And were you asked about conversations with Mr. Rosenberg about this whole situation?

A Yes, I was.

Q And did you tell the grand jury anything about leading Kenny on?

A If that's the grand jury testimony, I did not.

Q You were asked specifically about what Mr. Rosenberg told you, weren't you?

A Then it could have been mentioned after that -- subsequent to that date.

Q And it was subsequent to the 14th of January and very shortly thereafter that Mr. Rosenberg was indicted, wasn't it?

A I believe so, yes.

Q And isn't it a fact that it was after he was indicted that he told you that story?

A It's very possible. I told you I don't recall the date that it took place.

Q I know you may not recall the date, but the period of time in which it took place, Mr. Pendrick. On January 14th --

A It had to be after my grand jury appearaNCE.

Q It had to be, didn't it?

A Yes.

Q And it was also after he listened to the tape, wasn't it?

A It's possible. That I don't know.

Q Didn't he tell you on that occasion that he had heard the tape in my office with his lawyer?

A I don't recall if he said it on that particular occasion or not. It's possible.

Q And isn't it a fact, Mr. Pendrick, that

that's a story Mr. Rosenberg made up to explain what's on that tape, isn't it?

A That again I do not know. I told you that I did not know in what context it was being used.

MR. LOWE: I have no further questions.

THE COURT: Mr. Berger?

RECROSS EXAMINATION

BY MR. BERGER:

Q Did Mr. Rosenberg tell you he was making up a story of that type?

A No, not specifically.

MR. BERGER: I have no further questions.

THE COURT: Mr. Aidala?

RECROSS EXAMINATION

BY MR. AIDALA:

Q I show you Government's Exhibit 15 and I draw your attention to the white envelope which indicates California. Mr. Pendrick, if a customer from out of town were to fly into New York on the weekend --

MR. LOWE: Your Honor, hypotheticals made up out of thin air I don't think should be asked. There has to be a basis on the record for the hypothetical or it should not be asked.

MR. AIDALA: The basis is the questioning

those stocks would never --

THE COURT: I understand it, but the way the question has started out is not acceptable.

Q Mr. Pendrick, if a customer were to have given you those shares on a weekend, is there anything improper with your holding them until you got to the office on Monday?

A No. I would hold them until I got to the office on Monday.

Q And if on your way to your office they were on your person, would it indicate that you were bringing them to the office on Monday?

A Yes.

MR. AIDALA: No other questions.

THE COURT: Anything further?

MR. LOWE: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Pendrick, Mr. Berger asked you whether Mr. Rosenberg told you he was making up that story and your answer was "Not specifically." Do you recall being asked that question and giving that answer about two minutes ago?

A Yes, but I thought I already explained the

conversation that took place between Mr. Rosenberg and myself regarding that matter.

Q Are you satisfied that you have done so to the best of your ability to recall?

A Yes, I am.

MR. LOWE: Very well, then, I have no further questions.

THE COURT: Anything further?

Very well, you may step down.

(Witness excused.)

THE COURT: All right, I figured rather than take a recess in the middle of the day, we will recess now and break for the weekend. That doesn't break anybody's heart, does it?

Could I just have counsel here just for one minute. I know that the jury is anxious to ascertain when we are going to conclude this case and I will try to give you some information on timetable.

(At the bench.)

THE COURT: Mr. Lowe?

MR. LOWE: Barring a miracle over the weekend, I will have one more witness and that's all.

THE COURT: How long will you be on direct with that witness?

gentlemen, the calls were being made. They were being made and Mr. Noonan came here and told you what at least some of them were about.

Now comes the critical day, December 3, 1975. Here is where we are going to see why there has to have been an agreement between Rodman and Rosenberg. Mr. Rodman, according to Mr. Noonan, calls up Mr. Noonan, and what does Mr. Rodman say to Mr. Noonan? Well, Mr. Noonan tells us that Mr. Rodman told him. "You want to discuss this deal? Go to a safe phone and call me back. I am at a number in a hotel and a room number."

Isn't that interesting, ladies and gentlemen? What do you suppose that means? Let me suggest to you what it means. Mr. Rodman was calling Mr. Noonan and he did not intend to discuss legitimate business with him because if he did intend to discuss legitimate business with him, he wouldn't be telling Mr. Noonan, "Go to a safe phone." A safe phone, I submit you may find, ladies and gentlemen, is one which isn't tapped, which doesn't have a tape recorder attached to it, things of that nature. In other words, Mr. Noonan goes some place that you know you are not going to be overheard because we have got to do this kind of business where we don't get overheard because this is crooked business and we can't do it out in the open.

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Now, what does Mr. Noonan say? He says he hang up the phone, he waits a few minutes and he calls back on his own phone. Why do you suppose he does that?

Because he doesn't give a damn.

He calls back and he says, "When I called back the number that Rodman gave me the telephone was answered Holiday Inn, I asked for his room, the number that he gave me, and I was given that room and I got Mr. Rodman on the phone."

Now, we know from the evidence in this case that Mr. Rodman was at the Holiday Inn in Binghamton, New York on that day, the 3rd of December. We know the records of that Holiday Inn demonstrate on paper that Mr. Rodman was at that hotel the 1st, 2nd, 3rd. We know that Mr. Noonan said it was a 607 area code number, and we know that indeed a 607 area code number is the number of the Holiday Inn in Binghamton.

We even know exactly what the number of the Holiday Inn in Binghamton is. Lo and behold, ladies and gentlemen, on the 3rd of December we have phone calls from Mr. Noonan's phone number to 607-729-6371, which is the number of the Holiday Inn. He calls him several times on the 3rd.

You will recall what Mr. Noonan said happened.

He called Rodman back from his phone and Rodman said, "Okay, here is the deal. The deal is the stock Franklin Properties. You sell the stock to your customers for a dollar a share, and you get cash, 50 cents a share for every share you sell to your customers."

He also tells him, Mr. Rodman tells Mr. Noonan, "Check the market, see what's going on and call me back." Noonan says he checked the market. He checked the market and he found out the stock was being offered for sale in the market for 62-1/2 cents a share. That is not a dollar. So he calls back Mr. Rodman and he says, "Hey, I checked the market. The stock is selling for 62-1/2, not a dollar."

Mr. Rodman says to Mr. Noonan, "Don't worry about that. When you are ready to buy it for your customers we will see that it is at a dollar."

Now, how could they do that? ARe they magicians? Can they know for sure that that stock is going to go at a dollar? Remember that question that I just asked when we get to the conversation with Rosenberg because that is where the answer to it is.

So Mr. Noonan says nothing. You know, that's that. That is fine. Now, what else does he say? Later on that night, and the records reflect this, later on that night Mr. Noonan is calling this number in Binghamton,

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New York the night of the 3rd. As a matter of fact, the records show that at about 10:30 at night he called and that he called about six minutes after midnight on the morning -- which then becomes the morning of the 4th. Both of those calls are relatively brief in time and it is entirely likely from that that he called the hotel and didn't get Mr. Rodman, because he said heonly had one more conversation with Mr. Rodman that night, and what he told us was that he went to his friend's house and that he finally made his connection with Mr. Rodman that night from his friend's house. He told us his friend's number was DE 6-3819, and here is a page from the phone bill for that phone number, and it shows on the 4th of December at _:23 in the morning there is a phone call to Binghamton, New York, the number of the Holiday Inn, and the telephone conversation lasts for 11 minutes. Everything Mr. Noonan tells you up to this point is backed up by what is on those phone records.

The calls he says that he made he made. They are right on the record.

Ladies and gentlemen, no matter what you might think of Mr. Noonan, those records don't lie.

Now, what is the next thing that happens? The very next thing is that the following morning before any

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more activity takes place Mr. Noonan gets on the telephone to the office of the United States attorney for the Southern District of New York and speaks and tells what is happening.

Remember that he did this for whatever reason, whatever benefit he might have hoped to have gained for himself or anything like that, but think about it, he did it. If he is making it all up and this is all different from the way he tells it he is taking a risk, because he is coming in and saying this is what happened. He is reporting it and he knows, or should know, that when somebody reports that a crime is about to take place to the authorities, they do what they can to see what can be done about stopping it.

So what happens. He calls up and reports. Okay that is a report. And it is only Noonan's word for it, nothing much has really happenedyet, but what happens now? He gets a call from Mr. Rodman and you remember he is asking Mr. Rodman the day before things like "How am I going to be sure I am going to get paid? I don't want to do this deal and then get stiffed. I want to make sure I am going to get paid."

Mr. Rodman says, "I will try to put you in touch with the other guy."

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Do you remember that, the other guy in the case, the other guy he talks about? I will try and put you in touch with the other guy and you work out the details of getting paid with him.

On the morning of the 4th, ladies and gentlemen, Mr. Rodman calls up Mr.Noonan and Mr.Noonan tell us this Mr. Rodman calls him up and tells him who the other guy is. The other buy is Bill. He is Bill at a phone number, 689-3536. Lo and behold, it is John Maher's phone number, the records prove that, and Bill is William Rosenberg,who is before you here because there isn't any other Bill at John Maher Associates. There is nobody else by that name. It has got to be him.

So what does Mr. Noonan say then? He says that as soon as he hangs up from Mr. Rodman he calls the U. S.Attorney's office again and says, "Hey, Rodman called and told me to call Bill and gave me the number," and he also tells us that he was told "Go ahead and call Bill Think about that, ladies and gentlemen.

Here is a law enforcement agency. Sure, call Bill, let's find out who else is involved in this scheme. Let's find out. So what does he do? He calls Bill. He calls Bill and he gets Bill Rosenberg at John Maher Associates, and Bill Rosenberg says to him a couple of

things. The first thing that is important is this, and before we even get into the conversation, remember I asked you how do we know there had to be an agreement between Mr. Rodman and Mr. Rosenberg? We know because Mr. Rodman told Noonan to call Bill because Bill is the other guy in the deal.

Rodman told him to call Bill and then when Noonan called Bill he said, "Hey, this is Kenny. Billy Rod told me to call you." And Mr. Rosenberg says,"Oh, yeah."

Right away Mr. Rosenberg goes into the deal: Fifty cents a share for every share you sell to your customers at a dollar; it will cost you a little to launder the money, but basically you will get fifty cents a share."

Now, ladies and gentlemen, we didn't have a camera there with Mr. Rodman and Mr. Rosenberg sitting down and agreeing to do this deal, but unless they had an agreement Rodman couldn't call up Noonan and say, "Call Bill and Bill will take care of how the money will be taken care of," and when Noonan called Bill, Bill wouldn't have known what to do unless before that time, before Noonan was told to do that there was some kind of an agreement between the two Bills.

Talking about Bills,let me talk to the phone bills. Government Exhibit 2A in evidence. They are the

phone bills of John Maher Associates. Now, there are phone calls on these bills, ladies and gentlemen, to Mr. Rodman's home phone number as early as October 23, 1975, calls to Mr. Rodman's home. There are more on the 29th of October. But there is something even more critical than that. Those October calls, it is nice to know they knew each other in October -- and by the way, how do we know that? How do we know that? I mean, this is the business of John Maher, where these calls were made from.

We don't know for absolute positive that these were made by Bill Rosenberg, but we know this, we know they weren't made by Arthur Pendrick, we know they weren't made by Arthur Fine, and we know they weren't made by Lou Scala, because the three of them say they don't even know Mr. Rodman, and they never called him up.

We don't think they were made by Leon Nash either, because Leon Nash says he doesn't remember calling Mr. Rodman from John Maher Associates.

So, ladies and gentlemen, it is entirely possible that some kind of a ghost or some kind of strange person got into John Maher Associates and called up on the phone, but isn't it interesting, ladies and gentlemen, to find that on the 2nd of December 1975, there is a phone call to the Holiday Inn in Bingham from John Maher Associates.

On the 3rd of December there are three calls to the Holiday Inn in Bingham from John Maher Associates. If you remember the 3rd of December, that is the day Billy Rodman first told Kenny Noonan the details of the deal and while he was telling that to Kenny Noonan he was in direct communication, you can find, with Bill Rosenberg.

That is how we know that they had an agreement to do this fraudulent criminal deal. That is how we know for sure.

Now, Mr. Rosenberg, he tells Kenny for every share he sells, he will give him fifty cents. Fifty cents out of a dollar, if he is going to sell it, is going to go to Noonan. So now what is happening?

Noonan has now found out the two people involved in this deal, the two people who are for their own reasons anxious to have stock in Franklin Properties sold off for a dollar a share to somebody and get only 50 cents of it for themselves and give the other 50 cents away to Mr. Noonan, but now we know who the two of them are, and now Mr. Noonan agrees that he will call these people again and he will tape record those conversations.

And he did.

Ladies and gentlemen, once again I will tell you, there are going to be reasons suggested to you, including

the fact that he is convicted of a crime, that he has acted as an informant for a Government agency and gotten some money for it, that he had a case over his head that he wanted to get some help on and allthat kind of stuff, all these reasons why he might make up a story about some other people.

Ladies and gentelmen, that is terrific, but one thing Nocnan could not make up and that, ladies and gentlemen, is the tape recorded conversations that you heard played to you yesterday.

I am going to suggest something to you. The Judge has told you this and I agree with him. Anything the lawyers in this case say to you is not evidence. If I have already or if before I am finished I do say something to you that doesn't square with your memory of the evidence as you heard it, you are right and I am wrong, because I don't know any more about this case than anybody else. I wasn't there when it happened, except as you heard from the evidence I was there when some of Mr. Noonan's dealings happened.

Mr. Berger doesn't know anything about this case either because he wasn't there when it happened, nor does Mr. Aidala, he doesn't know anything either.

I am going to tell you something, ladies and

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gentlemen, and I want you to think about this. Hearken back to the opening statements. Each lawyer got up and told you what they thought the evidence was going to show.

Now, this is not a contest to see which lawyer is better or smarter or anything else, but think about this: Somebody told you that the evidence was going to show in this case that Mr. Noonan extorted William Rodman and got William Rodman to commit a crime by extorting him to do it. That was in the opening statement by Mr. Rodman's lawyer.

First of all, ladies and gentlemen, let me ask you one question, and this about it. What evidence is there to show that? I submit to you that when you look at every shred of evidence in this case, there is none to suggest that Ken Noonan extorted Billy Rodman in any way at all. Not a shred.

Let me tell you this, that tape conversation the night of the 4th of December between Noonan and Rodman, does that sound to you like a man, the voice of William Rodman, who is in fear, who is being exorted? Does it sound to you like he is just desperately afraid of this fellow Ken, to whom he wishes good luck?

You are going to hear arguments about what Mr. Rodman meant when he said certain things, and for that

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reason I would like to go over with you briefly what Mr. Rodman did say.

Right off the bat we have got Mr. Rodman saying some words right after Noonan says,"I know who this guy is, by the way" -- and remember what Noonan said, that he had beencalling John Maher and he finally found out the name of this Billy he was calling was named William Rosenberg and he lived out on the Island and all that sort of stuff. Rodman says,"All right, I don't know, and I don't, you know, okay?"

Now, you heard the tape and you heard the tone of voice in which that was said. I submit from the tone of the voice youcan find, and you really can only find this because Mr. Rodman wasn't really saying there, "I don't know the guy." He was saying, "I don't want to have to say that I know the guy on the telephone to you, Kenny Noonan. I don't want to have to say that. I don't know, you know, okay? Don't press me, Kenny. Don't make me say that name on the telephone. Let me pretend that I don't have anything to do with this."

The same thing is true of the tone of voice that you hear when Mr.Rodman says, when Kenny says that he talked to -- "I talked to him," meaning Rosenberg "and he explained the deal to me. He is trying to give me a half

less 5 per cent for somebody to do the checks."

That is the 5 per cent for laundering the money so it can't be traced. Rodman says, "Well, that's your business. That's why I said I don't want to know. I don't want to know from it, I really don't."

Of course not. "I don't want to be connected to this in any way that the evidence is going to tie me to being involved with this thing, because I know this is a crooked deal and I don't want to be involved in an evidentiary way. I will be in the deal, but I don't want to leave any tracks."

Then Noonan is saying, "I am worried about getting paid from him."

Rodman says,"I wouldn't. I wouldn't worry about getting paid from him." That is what he is saying. "But I mean, again, you know, I don't -- I certainly don't even want to be -- you know, I don't even want to be concerned. I'd love to turn around and know something good happened, you didn't even have to do it."

Does that sound to you a little bit like a guy who wants the deal to go through, he doesn't want, you know, to do anything to really upset Noonan, but who also is thinking in the back of his head, you know, talking on this telephone like this, somebody might hear what I am saying,

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